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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

No. 26067 Criminal

UNITED STATES OF AMERICA

vs.

THOMAS JOHNSON
FRANK BOYKIN
J. KENNETH EDLIN
WILLIAM ROBINSON

Baltimore, Maryland

April 1, 1963

INDICTMENT

The Grand Jury for the District of Maryland charges:

(1) That at all times hereinafter mentioned THOMAS F. JOHNSON was a member of the House of Representatives of the United States of America, representing the First Congressional District of Maryland.

(2) That at all times hereinafter mentioned FRANK W. BOYKIN was a member of the House of Representatives of the United States of America, representing the First Congressional District of Alabama.

(3) That at all times hereinafter mentioned the Department of Justice was a Department of the United States, created, organized and existing by virtue of Chapter 150 of 16 Stat. 162, entitled "An Act to establish the Department of Justice," enacted by the Congress of the United States on June 22, 1870, and charged with the responsibility of enforcing the laws of the United States.

(4) That at all times hereinafter mentioned the Attorney General of the United States was the head of the said

Department of Justice, and was assisted in the performance of his duties by the Assistant Attorney General, Criminal Division, Department of Justice.

(5) That at all times hereinafter mentioned FIRST COLONY SAVINGS AND LOAN ASSOCIATION, INC., was a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its principal places of business at Prince Frederick and Elkton, Maryland.

(6) That at all times hereinafter mentioned FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC., was a corporation, organized and existing under and by virtue of the laws of the State of Maryland, with its principal places of business located at Prince Frederick and Chevy Chase, Maryland.

(7) That from April 27, 1961, until on or about December 31, 1961, CHARLES COUNTY LAND COMPANY, INC., was a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its principal place of business located at La Plata, Maryland.

(8) That from on or about May 2, 1961, until on or about December 31, 1961, LEISURE CITY LAND COMPANY, INC., was a corporation organized and existing under and by virtue of the laws of the State of Virginia, with its principal place of business located at Brooke, Virginia.

(9) That at all times hereinafter mentioned TENSAW LAND AND TIMBER COMPANY was a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal place of business at Mobile, Alabama.

(10) That at all times hereinafter mentioned J. KENNETH EDLIN dominated and controlled the business policies and operations of the said FIRST COLONY SAVINGS AND LOAN ASSOCIATION, INC., and the said FIRST CONTINENTAL SAVINGS AND LOAN ASSO-

CIATION, INC.; that at all times hereinbefore mentioned in paragraph 7 J. KENNETH EDLIN dominated and controlled the business policies and operations of the said CHARLES COUNTY LAND COMPANY, INC.; and that at all times hereinbefore mentioned in paragraph 8 J. KENNETH EDLIN dominated and controlled the business policies and operations of the said LEISURE CITY LAND COMPANY, INC.

(11) That at all times hereinafter mentioned WILLIAM L. ROBINSON was counsel, legal advisor, a director and an officer of the said FIRST COLONY SAVINGS AND LOAN ASSOCIATION, INC., and of the said FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC.; that at all times hereinbefore mentioned in paragraph 7 WILLIAM L. ROBINSON was a director and an officer of the said CHARLES COUNTY LAND COMPANY, INC.; and that at all times hereinbefore mentioned in paragraph 8 WILLIAM L. ROBINSON was a director and an officer of the said LEISURE CITY LAND COMPANY, INC.

(12) That at all times hereinafter mentioned FRANK W. BOYKIN owned a substantial interest in the said TENSAW LAND AND TIMBER COMPANY and dominated and controlled the business policies and operations of the said TENSAW LAND AND TIMBER COMPANY.

(13) That on November 17, 1959, an indictment was returned in the United States District Court for the District of Maryland, being numbered 25038 on the dockets and records of the said Court and styled, "United States of America vs. J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., a Maryland corporation, Rosabelle Edlin and Jackson D. Rains," which said indictment was pending in said Court at all times hereinafter mentioned.

(14) That from on or about April 1, 1960, and continuously thereafter until on or about December 31, 1961,

THOMAS F. JOHNSON,
FRANK W. BOYKIN,
J. KENNETH EDLIN, and
WILLIAM L. ROBINSON,

herein named as defendants, together with FIRST COLONY SAVINGS AND LOAN ASSOCIATION, INC., FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC., CHARLES COUNTY LAND COMPANY, INC., LEISURE CITY LAND COMPANY, INC., and TENSAW LAND AND TIMBER COMPANY, herein named as co-conspirators but not indicted, and with other persons to the Grand Jurors unknown, did unlawfully, feloniously, wilfully, and knowingly combine, conspire, confederate, and agree together and with each other within the State and District of Maryland and at various other places to the Grand Jurors unknown, to defraud the United States of and concerning its governmental functions and rights hereinafter described, to wit:

(a) Of and concerning its right to have its business and affairs, and particularly the transaction of the official business of the Department of Justice, conducted honestly and impartially as the same should be conducted, free from corruption, fraud, improper and undue influence, dishonesty, unlawful impairment and obstruction.

(b) Of and concerning its right to have its officers and employees, and particularly personnel of the Department of Justice, free to transact the official business of the United States unhindered, unhampered, unobstructed and unimpaired by the exertion upon them of dishonest, corrupt, unlawful, improper and undue pressure and influence.

(c) Of and concerning its right to have the lawful functions and duties of the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN in their official capacities as Members of the House of Representatives of the United States exercised, performed and administered free from corruption, dishonesty and fraud resulting from their

personal and pecuniary interest in the success of J. KENNETH EDLIN, WILLIAM L. ROBINSON, FIRST COLONY SAVINGS AND LOAN ASSOCIATION, INC., FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC., CHARLES COUNTY LAND COMPANY, INC., LEISURE CITY LAND COMPANY, INC., and TENSAW LAND AND TIMBER COMPANY in attempting to persuade the Department of Justice and officials thereof to cause the postponement of the trial of the charges contained in the indictment hereinbefore described in paragraph 13, and the eventual dismissal of the said indictment.

(d) Of and concerning its right not to be deprived of the faithful, loyal and conscientious services of the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN in their official capacities as Members of the House of Representatives and as Members of Congress, uninfluenced by corruption and by payments of money and other valuable considerations to the said THOMAS F. JOHNSON and FRANK W. BOYKIN by the said other defendants and the said co-conspirators as compensation for service rendered and to be rendered by said THOMAS F. JOHNSON in behalf of the said other defendants and the said co-conspirators in relation to matters pending in the House of Representatives and for services rendered by the said THOMAS F. JOHNSON and FRANK W. BOYKIN before the Department of Justice in relation to proceedings, charges and accusations in which the United States is a party and directly interested.

(15) It was a part of said conspiracy that the said THOMAS F. JOHNSON should, at the request of the defendants J. KENNETH EDLIN and WILLIAM L. ROBINSON, render services, for compensation, to said defendants J. KENNETH EDLIN and WILLIAM L. ROBINSON and to co-conspirators FIRST COLONY SAVINGS AND LOAN ASSOCIATION, INC., and FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC., to wit, the making of a speech, defending

the operations of Maryland's "independent" savings and loan associations, the financial stability and solvency thereof, and the reliability and integrity of the "commercial insurance" on investments made by said "independent" savings and loan associations, on the floor of the House of Representatives.

(16) It was a part of said conspiracy that the defendants THOMAS F. JOHNSON, J. KENNETH EDLIN and WILLIAM L. ROBINSON would cause to be reprinted 50,000 copies of the aforesaid speech, delivered by the defendant THOMAS F. JOHNSON, for distribution to the public at large, to prospective depositors in the FIRST COLONY SAVINGS AND LOAN ASSOCIATION, INC., and the FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC., and to members of the General Assembly of Maryland during its 1961 session.

(17) It was a part of said conspiracy that the defendants THOMAS F. JOHNSON, FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON and others would meet from time to time to prepare and discuss the contents of a memorandum to be presented to the Department of Justice and officials thereof to attempt to persuade the Department of Justice and officials thereof to cause the postponement of the trial of the charges contained in the indictment hereinbefore described in paragraph 13, and the eventual dismissal of the said indictment.

(18) It was a part of said conspiracy that the said J. KENNETH EDLIN and WILLIAM L. ROBINSON and the said co-conspirators would corruptly give and pay money and other valuable considerations to the said THOMAS F. JOHNSON and FRANK W. BOYKIN to bring the prestige, weight and influence of their said offices to bear upon officials of the Department of Justice in order to promote the interests and desires of the said J. KENNETH EDLIN and WILLIAM L. ROBINSON and of the said co-conspirators in relation to the indictment hereinbefore described in paragraph 13.

(19) It was a part of said conspiracy that the said THOMAS F. JOHNSON and FRANK W. BOYKIN should, at the request of the said other defendants and the said co-conspirators, render services, for compensation, to said other defendants and the said co-conspirators in relation to said indictment, to wit, by interceding with and exerting their official influence upon the officials of the Department of Justice and bringing the prestige, weight and influence of their said official position to bear upon them and upon the Department of Justice in order to obtain decisions and actions upon said indictment which would be desirable, beneficial and advantageous to said other defendants and the said co-conspirators.

(20) It was a part of said conspiracy that the defendants THOMAS F. JOHNSON, FRANK W. BOYKIN and WILLIAM L. ROBINSON would call upon, confer with, write letters to, and make telephone calls to the Attorney General of the United States and the Assistant Attorney General, Criminal Division, Department of Justice, at their offices in the Department of Justice to attempt to persuade the Department of Justice and officials thereof to cause the postponement of the trial of the charges contained in the indictment hereinbefore described in paragraph 13, and the eventual dismissal of the said indictment, and as compensation therefor the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN would receive money, promises and other valuable considerations from the said other defendants and the said co-conspirators.

(21) It was part of said conspiracy that the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN would request Charles H. Z. Meyer, Supervisor, United States Probation and Parole Service, Chicago, Illinois, to come to the District of Columbia for the stated purpose of assisting the said THOMAS F. JOHNSON and FRANK W. BOYKIN in a Congressional investigation involving savings and loan associations, and particularly the background of the defendant J. KENNETH EDLIN and his

relation thereto, and that the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN would take Meyer to the Department of Justice to attempt to persuade the Department of Justice and officials thereof to cause the postponement of the trial of the charges contained in the indictment hereinbefore described in paragraph 13, and the eventual dismissal of the said indictment.

(22) It was a part of said conspiracy that the defendants J. KENNETH EDLIN and WILLIAM L. ROBINSON would form a corporation known as Charles County Land Company, Inc., to take title to a tract of land in Charles County, Maryland, in which TENSAW LAND AND TIMBER COMPANY held a substantial proprietary interest, and from which the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN would receive compensation for their actions and services on behalf of the defendants J. KENNETH EDLIN and WILLIAM L. ROBINSON and the aforesaid co-conspirators, as more particularly described herein.

(23) It was part of said conspiracy that the defendants J. KENNETH EDLIN and WILLIAM L. ROBINSON would form a corporation known as Leisure City Land Company, Inc., to take title to a tract of land in Stafford County, Virgina, in which TENSAW LAND AND TIMBER COMPANY held a substantial proprietary interest, and from which the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN would receive compensation for their actions and services on behalf of the defendants J. KENNETH EDLIN and WILLIAM L. ROBINSON and the aforesaid co-conspirators, as more particularly described herein.

(24) It was a part of said conspiracy that the defendants J. KENNETH EDLIN and WILLIAM L. ROBINSON would pay the defendant FRANK W. BOYKIN and TENSAW LAND AND TIMBER COMPANY the sum of Two Hundred Fifty Thousand Dollars ($250,000.00), and would offer and promise to the defendant FRANK W. BOYKIN and TENSAW LAND AND TIMBER COM-

PANY commissions and other valuable considerations as an inducement for the defendant FRANK W. BOYKIN to use his influence as a member of the House of Representatives in attempting to secure the postponement of the trial of the charges contained in the indictment hereinbefore described in paragraph 13, and the eventual dismissal of the said indictment.

(25) It was a part of said conspiracy that the said defendants and co-conspirators would conceal the aforesaid receipt of money, promises and other valuable considerations by the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN and would do such other and further acts as they might deem necessary and expedient to prevent the disclosure of the said receipt of money, promises and other valuable considerations by the said THOMAS F. JOHNSON and FRANK W. BOYKIN.

OVERT ACTS

In pursuance of and in order to effect the objects of said conspiracy, the defendants and co-conspirators did do and perform numerous overt acts, including the following, to wit:

(1) During the period from on or about April 1, 1960, to on or about June 30, 1960, the defendants J. KENNETH EDLIN, WILLIAM L. ROBINSON and THOMAS F. JOHNSON met in the Congressional office of defendant THOMAS F. JOHNSON, the Woodner Hotel, and the Congressional Hotel, in the District of Columbia, and discussed the contents of a proposed speech to be given by the defendant THOMAS F. JOHNSON on the floor of the House of Representatives.

(2) Between on or about April 1, 1960, and on or about June 30, 1960, in the District of Maryland and in the District of Columbia, the defendant WILLIAM L. ROBINSON and others prepared drafts of a proposed speech to be given by the defendant THOMAS F. JOHNSON.

(3) On or about June 20, 1960, the defendant WILLIAM L. ROBINSON delivered a check drawn on his account at the Industrial National Bank of Miami, Florida, in the amount of $500, to the defendant THOMAS F. JOHNSON, payable to the defendant THOMAS F. JOHNSON.

(4) On or about June 30, 1960, in the District of Columbia, the defendant THOMAS F. JOHNSON delivered a speech on the floor of the House of Representatives.

(5) On or about July 5, 1960, in the District of Maryland, FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC., drew a check for $168.91, payable to the defendant THOMAS F. JOHNSON.

(6) On or about July 6, 1960, in the District of Columbia, the defendant THOMAS F. JOHNSON caused and directed the reprinting of 10,000 copies of the speech delivered on the floor of the House of Representatives on June 30, 1960, by the defendant THOMAS F. JOHNSON.

(7) On or about August 12, 1960, in the District of Columbia, the defendant THOMAS F. JOHNSON caused and directed the reprinting of 40,000 copies of the speech delivered on the floor of the House of Representatives on June 30, 1960, by the defendant THOMAS F. JOHNSON.

(8) On or about September 9, 1960, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $1,000.00, dated August 30, 1960, and drawn on the account of the defendant WILLIAM L. ROBINSON at the Industrial National Bank, Miami, Florida.

(9) On or about November 4, 1960, the defendant WILLIAM L. ROBINSON issued and delivered a check drawn on his account at the Industrial National Bank of Miami, Florida, in the amount of $300, to the defendant THOMAS F. JOHNSON, payable to Russell O. Hickman, Treasurer for Tom Johnson for Congress Committee.

(10) On or about November 4, 1960, in the Dis-

trict of Maryland, the defendant J. KENNETH EDLIN caused the FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC., to draw a check in the amount of $300, payable to the defendant WILLIAM L. ROBINSON, as reimbursement for the check described in Overt Act 9.

(11) On or about January 13, 1961, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $800.00, dated January 7, 1961, and drawn on the account of the defendant WILLIAM L. ROBINSON at the Industrial National Bank, Miami, Florida.

(12) On or about February 10, 1961, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $800.00, dated February 2, 1961, and drawn on the account of the defendant WILLIAM L. ROBINSON at the Industrial National Bank, Miami, Florida.

(13) On or about March 2, 1961, at Miami, Florida, the defendant J. KENNETH EDLIN reserved accommodations at the Eden Roc Hotel, for the defendant THOMAS F. JOHNSON.

(14) During the period from on or about March 3, 1961, to on or about March 7, 1961, the defendants THOMAS F. JOHNSON, J. KENNETH EDLIN and WILLIAM L. ROBINSON met at Miami, Florida.

(15) On or about March 8, 1961, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $800, dated March 6, 1961, and drawn on the account of the defendant WILLIAM L. ROBINSON at the Industrial National Bank, Miami, Florida.

(16) On or about March 24, 1961, the defendants THOMAS F. JOHNSON, FRANK W. BOYKIN, J. KENNETH EDLIN, WILLIAM L. ROBINSON and others met in the District of Columbia.

(17) On or about March 25, 1961, in the District of Columbia, the defendants THOMAS F. JOHNSON, FRANK W. BOYKIN, and WILLIAM L. ROBINSON called upon the Attorney General of the United States.

(18) On or about March 25, 1961, immediately after the defendants THOMAS F. JOHNSON, FRANK W. BOYKIN, and WILLIAM L. ROBINSON had called upon the Attorney General of the United States, the defendants THOMAS F. JOHNSON, FRANK W. BOYKIN, J. KENNETH EDLIN, WILLIAM L. ROBINSON and others met in the District of Columbia.

(19) On or about March 28, 1961, in the District of Columbia, the defendant THOMAS F. JOHNSON caused to be delivered to the Attorney General of the United States a memorandum together with a covering letter addressed to the Attorney General of the United States.

(20) On or about April 3, 1961, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $800.00, dated March 31, 1961, and drawn on the account of the defendant WILLIAM L. ROBINSON at the Industrial National Bank, Miami, Florida.

(21) On or about April 17, 1961, in the District of Columbia, the defendant THOMAS F. JOHNSON called upon the Attorney General of the United States and the Assistant Attorney General, Criminal Division, Department of Justice.

(22) On or about April 26, 1961, in the District of Columbia, the defendant J. KENNETH EDLIN delivered to the defendant FRANK W. BOYKIN two cashier's checks, dated April 26, 1961, each for $125,000.00, payable to TENSAW LAND AND TIMBER COMPANY and issued by the National Bank of Bethesda-Chevy Chase, Bethesda, Maryland.

(23) On or about April 27, 1961, in the District of Maryland, the defendants J. KENNETH EDLIN, WILLIAM

L. ROBINSON, THOMAS F. JOHNSON and FRANK W. BOYKIN caused and directed the incorporation of CHARLES COUNTY LAND COMPANY, INC.

(24) On or about April 29, 1961, the defendants J. KENNETH EDLIN, WILLIAM L. ROBINSON, THOMAS F. JOHNSON and FRANK W. BOYKIN caused the sale of a certain tract of land in Stafford County, Virginia, from TENSAW LAND AND TIMBER COMPANY to LEISURE CITY LAND COMPANY, INC., for $3,000,000.

(25) On or about May 2, 1961, the defendants J. KENNETH EDLIN, WILLIAM L. ROBINSON, THOMAS F. JOHNSON and FRANK W. BOYKIN caused and directed the incorporation of LEISURE CITY LAND COMPANY, INC.

(26) On or about May 3, 1961, in the District of Columbia, the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN called upon the Assistant Attorney General, Criminal Division, Department of Justice.

(27) On or about May 4, 1961, the defendant FRANK W. BOYKIN deposited in the United States mail a letter addressed to the Assistant Attorney General, Criminal Division, Department of Justice.

(28) On or about May 8, 1961, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $3,500.00, dated May 2, 1961, and drawn by FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC.

(29) On or about May 9, 1961, in the District of Columbia, the defendant THOMAS F. JOHNSON deposited in the United States mail a letter addressed to the Assistant Attorney General, Criminal Division, Department of Justice.

(30) On or about May 13, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN forwarded to

the defendant J. KENNETH EDLIN a letter from the Assistant Attorney General, Criminal Division, Department of Justice.

(31) On or about May 15, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN forwarded to the defendant J. KENNETH EDLIN a letter from the Attorney General of the United States.

(32) On or about May 15, 1961, in the District of Maryland, FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC., entered into a lease with the defendant THOMAS F. JOHNSON and his wife, providing for the rental by FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC., of a building owned by the defendant THOMAS F. JOHNSON and his wife in Snow Hill, Maryland, at a monthly rental of $200.

(33) On or about May 22, 1961, in the District of Columbia, the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN called upon the Assistant Attorney General, Criminal Division, Department of Justice.

(34) On or about May 22, 1961, in the District of Columbia, the defendant THOMAS F. JOHNSON made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(35) On or about May 23, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(36) On or about June 5, 1961, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $2,500.00, dated May 25, 1961, and drawn by FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC.

(37) On or about June 7, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a tele-

phone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(38) On or about June 9, 1961, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $4,000.00, dated June 7, 1961, and drawn by FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC.

(39) On or about June 12, 1961, in the District of Columbia, the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN called upon the Assistant Attorney General, Criminal Division, Department of Justice.

(40) On or about June 13, 1961, the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN telephoned Charles H. Z. Meyer, Supervisor, United States Probation and Parole Service, Chicago, Illinois.

(41) On or about June 13, 1961, in Chicago, Illinois, the defendant J. KENNETH EDLIN telephoned Charles H. Z. Meyer, Supervisor, United States Probation and Parole Service, Chicago, Illinois.

(42) On or about June 13, 1961, the defendants J. KENNETH EDLIN and WILLIAM L. ROBINSON met Charles H. Z. Meyer in the Palmer House Hotel, Chicago, Illinois.

(43) On or about June 15, 1961, in the District of Columbia, the defendants J. KENNETH EDLIN, WILLIAM L. ROBINSON, FRANK W. BOYKIN, and THOMAS F. JOHNSON met with Charles H. Z. Meyer.

(44) On or about June 15, 1961, in the District of Columbia, the defendants J. KENNETH EDLIN, WILLIAM L. ROBINSON, FRANK W. BOYKIN and THOMAS F. JOHNSON took Charles H. Z. Meyer to call upon the Assistant Attorney General, Criminal Division, Department of Justice, and other officials of the Department of Justice.

(45) On or about June 19, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(46) On or about June 23, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(47) On or about June 27, 1961, in the District of Columbia, the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN called upon the Assistant Attorney General, Criminal Division, Department of Justice.

(48) On or about June 28, 1961, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $3,250.00, dated June 28, 1961, and drawn by FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC.

(49) On or about August 1, 1961, in the District of Columbia, the defendant THOMAS F. JOHNSON made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(50) On or about August 7, 1961, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $2,000.00, dated August 4, 1961, and drawn on the account of the defendant WILLIAM L. ROBINSON at the Industrial National Bank, Miami, Florida.

(51) On or about August 24, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(52) On or about August 24, 1961, in the District of Columbia, the defendant THOMAS F. JOHNSON called upon the Assistant Attorney General, Criminal Division, Department of Justice.

(53) On or about August 31, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(54) On or about September 7, 1961, in the District of Columbia, the defendant THOMAS F. JOHNSON called upon the Attorney General of the United States.

(55) On or about September 8, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(56) On or about September 9, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(57) On or about September 14, 1961, in the District of Columbia, the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN called upon the Assistant Attorney General, Criminal Division, Department of Justice.

(58) On or about September 15, 1961, in the District of Columbia, the defendant THOMAS F. JOHNSON made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(59) On or about September 19, 1961, at Berlin, Maryland, the defendant THOMAS F. JOHNSON deposited to his account in the Exchange and Savings Bank a check for $1,500.00, dated September 12, 1961, and drawn on the account of the defendant WILLIAM L. ROBINSON at the Industrial National Bank, Miami, Florida.

(60) On or about September 20, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(61) On or about September 21, 1961, in the District of Columbia, the defendants THOMAS F. JOHNSON and

FRANK W. BOYKIN called upon the Assistant Attorney General, Criminal Division, Department of Justice.

(62) On or about October 10, 1961, in the District of Columbia, the defendant THOMAS F. JOHNSON made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(63) On or about October 12, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(64) On or about October 13, 1961, in the District of Columbia, the defendant WILLIAM L. ROBINSON called upon the Assistant Attorney General, Criminal Division, Department of Justice.

(65) On or about October 16, 1961, in the District of Columbia, the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN called upon the Assistant Attorney General, Criminal Division, Department of Justice.

(66) On or about October 18, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(67) On or about October 19, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN deposited in the United States mail a letter to the Attorney General of the United States.

(68) On or about October 20, 1961, in the District of Columbia, the defendant WILLIAM L. ROBINSON called upon the Assistant Attorney General, Criminal Division, Department of Justice.

(69) On or about October 20, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(70) On or about October 23, 1961, in the District of

Columbia, the defendant THOMAS F. JOHNSON made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(71) On or about October 23, 1961, in the District of Columbia, the defendants J. KENNETH EDLIN and WILLIAM L. ROBINSON delivered to the defendant THOMAS F. JOHNSON travelers' checks in the total sum of $3,000, issued by FIRST CONTINENTAL SAVINGS AND LOAN ASSOCIATION, INC.

(72) On or about October 25, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(73) On or about October 30, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

(74) On or about November 6, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN deposited in the United States mail a letter to the Attorney General of the United States.

(75) On or about November 21, 1961, in the District of Columbia, the defendant FRANK W. BOYKIN made a telephone call to the Assistant Attorney General, Criminal Division, Department of Justice.

United States Code, Title 18, Section 371.

SECOND COUNT

And the Grand Jury for the District of Maryland further charges:

That on or about April 3, 1961, in the District of Maryland, THOMAS F. JOHNSON, herein named a defendant, being duly elected a Member of Congress, and after his election and qualification as such and during his continuance in office, acting jointly and in concert with FRANK

W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON, also named as defendants herein, the said FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON aiding, abetting, counselling, commanding, inducing and procuring the defendant THOMAS F. JOHNSON so to act, unlawfully, wilfully, knowingly and corruptly did receive, directly and indirectly, from the said J. KENNETH EDLIN and WILLIAM L. ROBINSON, compensation in the sum of Eight Hundred Dollars ($800.00), to wit, the proceeds of a bank check bearing date March 31, 1961, being in the sum of $800.00, payable to the order of Johnson and Johnson, and bearing the name of the defendant WILLIAM L. ROBINSON as maker, which said check was drawn on the Industrial National Bank of Miami, Florida, and was deposited in, credited to, and final payment in the sum of $300.00 made thereon to the account of the said THOMAS F. JOHNSON at the Exchange and Savings Bank, Berlin, Maryland, on or about April 3, 1961, the date and place of the receipt of said check by the defendant THOMAS F. JOHNSON being to the Grand Jurors unknown, for services rendered and to be rendered by him, the said THOMAS F. JOHNSON, before the Department of Justice of the United States in relation to a proceeding, charge and accusation in which the United States was a party and directly interested, to wit: an indictment returned on November 17, 1959, in the United States District Court for the District of Maryland, being numbered 25038 on the dockets and records of said Court and styled, "United States of America vs. J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., a Maryland corporation, Rosabelle Edlin, and Jackson D. Rains," and which, as the said defendants then and there well knew, was pending in said Court on April 3, 1961, the said services consisting of interceding and conferring with officials of the said Department of Justice, bringing the prestige weight and influence of the said defendant THOMAS F. JOHNSON'S official position to bear upon them, presenting assertions, arguments and allegations, and otherwise

acting on behalf of the said J. KENNETH EDLIN and WILLIAM L. ROBINSON to influence and persuade the said officials of the said Department of Justice in order to obtain favorable decisions and actions in and upon the aforesaid proceeding, charge and accusation, to wit, the postponement of the trial of the charges contained in the said indictment and the eventual dismissal of the said indictment.

United States Code, Title 18, Sections 281 and 2.

THIRD COUNT

And the Grand Jury for the District of Maryland further charges:

That on or about May 8, 1961, in the District of Maryland, THOMAS F. JOHNSON, herein named a defendant, being duly elected a Member of Congress, and after his election and qualification as such and during his continuance in office, acting jointly and in concert with FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON, also named as defendants herein, the said FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON aiding, abetting, counselling, commanding, inducing and procuring the defendant THOMAS F. JOHNSON so to act, unlawfully, wilfully, knowingly and curruptly did receive, directly and indirectly, from the said J. KENNETH EDLIN and WILLIAM L. ROBINSON, compensation in the sum of Thirty-five Hundred Dollars ($3500.00), to wit, the proceeds of a bank check bearing dated May 2, 1961, being in the sum of $3500.00, payable to the order of Johnson and Johnson, and bearing the name of First Continental Savings and Loan Association, Inc., as maker, which said check was drawn on the National Bank of Bethesda-Chevy Chase, Bethesda, Maryland, and deposited in, credited to, and final payment in the sum of $3,500.00, made thereon to the account of the said THOMAS F. JOHNSON at the Exchange and Savings Bank, Berlin, Maryland, on or about May 8, 1961, the date and place of the receipt of said check by the de-

fendant THOMAS F. JOHNSON being to the Grand Jurors unknown, for services rendered and to be rendered by him, the said THOMAS F. JOHNSON, before the Department of Justice of the United States in relation to a proceeding, charge and accusation in which the United States was a party and directly interested, to wit: an indictment returned on November 17, 1959, in the United States District Court for the District of Maryland, being numbered 25038 on the dockets and records of said Court and styled, "United States of America vs. J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., a Maryland corporation, Rosabelle Edlin, and Jackson D. Rains," and which, as the defendants then and there well knew, was pending in said Court on May 8, 1961, the said services consisting of interceding and conferring with officials of the said Department of Justice, bringing the prestige, weight and influence of the said defendant THOMAS F. JOHNSON'S official position to bear upon them, presenting assertions, arguments and allegations, and otherwise acting on behalf of the said J. KENNETH EDLIN and WILLIAM L. ROBINSON to influence and persuade the said officials of the said Department of Justice in order to obtain favorable decisions and actions in and upon the aforesaid proceeding, charge and accusation, to wit, the postponement of the trial of the charges contained in the said indictment and the eventual dismissal of the said indictment.

United States Code, Title 18, Sections 281 and 2.

FOURTH COUNT

And the Grand Jury for the District of Maryland further charges:

That on or about June 5, 1961, in the District of Maryland, THOMAS F. JOHNSON, herein named a defendant, being duly elected a Member of Congress, and after his election and qualification as such and during his continuance in office, acting jointly and in concert with FRANK

W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON, also named as defendants herein, the said FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON aiding, abetting, counselling, commanding, inducing and procuring the defendant THOMAS F. JOHNSON so to act, unlawfully, wilfully, knowingly and corruptly did receive, directly and indirectly, from the said J. KENNETH EDLIN and WILLIAM L. ROBINSON, compensation in the sum of Twenty-five Hundred Dollars ($2,500.00), to wit, the proceeds of bank check bearing date May 25, 1961, being in the sum of $2,500.00, payable to the order of Johnson and Johnson, and bearing the name of First Continental Savings and Loan Association, Inc., as maker, which said check was drawn on the National Bank of Bethesda-Chevy Chase, Bethesda, Maryland, and deposited in, credited to, and final payment in the amount of $2,500.00 made thereon to the account of the said THOMAS F. JOHNSON at the Exchange and Savings Bank, Berlin, Maryland, on or about June 5, 1961, the date and place of the receipt of said check by the defendant THOMAS F. JOHNSON being to the Grand Jurors unknown, for services rendered and to be rendered by him, the said THOMAS F. JOHNSON, before the Department of Justice of the United States in relation to a proceeding, charge and accusation in which the United States was a party and directly interested, to wit: an indictment returned on November 17, 1959, in the United States District Court for the District of Maryland, being numbered 25038 on the dockets and records of said Court and styled, "United States of America vs. J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., a Maryland corporation, Rosabelle Edlin, and Jackson D. Rains," and which, as the defendants then and there well knew, was pending in said Court on June 5, 1961, the said services consisting of interceding and conferring with officials of the said Department of Justice, bringing the prestige, weight and influence of the said defendant THOMAS F. JOHNSON'S official position to bear upon them, pre-

senting assertions, arguments and allegations, and otherwise acting on behalf of the said J. KENNETH EDLIN and WILLIAM L. ROBINSON to influence and persuade the said officials of the said Department of Justice in order to obtain favorable decisions and actions in and upon the aforesaid proceeding, charge and accusation, to wit, the postponement of the trial of the charges contained in the said indictment and the eventual dismissal of the said indictment.

United States Code, Title 18, Sections 281 and 2.

FIFTH COUNT

And the Grand Jury for the District of Maryland further charges:

That on or about June 9, 1961, in the District of Maryland, THOMAS F. JOHNSON, herein named a defendant, being duly elected a Member of Congress, and after his election and qualification as such and during his continuance in office, acting jointly and in concert with FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON, also named as defendants herein, the said FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON aiding, abetting, counselling, commanding, inducing and procuring the defendant THOMAS F. JOHNSON so to act, unlawfully, wilfully, knowingly and corruptly did receive, directly and indirectly, from the said J. KENNETH EDLIN and WILLIAM L. ROBINSON, compensation in the sum of Four Thousand Dollars ($4,000.00), to wit, the proceeds of a bank check bearing date June 7, 1961, being in the sum of $4,000.00, payable to the order of Johnson and Johnson, and bearing the name of First Continental Savings and Loan Association, Inc., as maker, which said check was drawn on the National Bank of Bethesda-Chevy Chase, Bethesda, Maryland, and deposited in, credited to, and final payment in the sum of $4,000.00 made thereon to the account of the said THOMAS F. JOHNSON at the Exchange and Savings

Bank, Berlin, Maryland, on or about June 9, 1961, the date and place of the receipt of said check by the defendant THOMAS F. JOHNSON being to the Grand Jurors unknown, for services rendered and to be rendered by him, the said THOMAS F. JOHNSON, before the Department of Justice of the United States in relation to a proceeding, charge and accusation in which the United States was a party and directly interested, to wit: an indictment returned on November 17, 1959, in the United States District Court for the District of Maryland, being numbered 25038 on the dockets and records of said Court and styled, "United States of America vs. J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., a Maryland corporation, Rosabelle Edlin, and Jackson D. Rains," and which, as the defendants then and there well knew, was pending in said Court on June 9, 1961, the said services consisting of interceding and conferring with officials of the said Department of Justice, bringing the prestige, weight and influence of the said defendant THOMAS F. JOHNSON'S official position to bear upon them, presenting assertions, arguments and allegations, and otherwise acting on behalf of the said J. KENNETH EDLIN and WILLIAM L. ROBINSON to influence and persuade the said officials of the said Department of Justice in order to obtain favorable decisions and actions in and upon the aforesaid proceeding, charge and accusation, to wit, the postponement of the trial of the charges contained in the said indictment and the eventual dismissal of the said indictment.

United States Code, Title 18, Sections 281 and 2.

SIXTH COUNT

And the Grand Jury for the District of Maryland further charges:

That on or about June 28, 1961, in the District of Maryland, THOMAS F. JOHNSON, herein named a defendant, being duly elected a Member of Congress, and after his

election and qualification as such and during his continuance in office, acting jointly and in concert with FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON, also named as defendants herein, the said FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON aiding, abetting, counselling, commanding, inducing and procuring the defendant THOMAS F. JOHNSON so to act, unlawfully, wilfully, knowingly and corruptly did receive, directly and indirectly, from the said J. KENNETH EDLIN and WILLIAM L. ROBINSON, compensation in the sum of Three Thousand Two Hundred Fifty Dollars ($3,250.00), to wit, the proceeds of a bank check bearing date June 28, 1961, being in the sum of $3,250.00, payable to Johnson and Johnson, and bearing the name of First Continental Savings and Loan Association, Inc., as maker, which said check was drawn on the National Bank of Bethesda-Chevy Chase, Bethesda, Maryland, and deposited in, credited to, and final payment in the sum of $3,250.00 made thereon to the account of the said THOMAS F. JOHNSON at the Exchange and Savings Bank, Berlin, Maryland, on or about June 28, 1961, the date and place of the receipt of said check by the defendant THOMAS F. JOHNSON being to the Grand Jurors unknown, for services rendered and to be rendered by him, the said THOMAS F. JOHNSON, before the Department of Justice of the United States in relation to a proceeding, charge and accusation in which the United States was a party and directly interested, to wit: an indictment returned on November 17, 1959, in the United States District Court for the District of Maryland, being numbered 25038 on the dockets and records of said Court and styled, "United States of America vs. J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., a Maryland corporation, Rosabelle Edlin, and Jackson D. Rains," and which, as the defendants then and there well knew, was pending in said Court on June 28, 1961, the said services consisting of interceding and conferring with officials of the said Department of Justice, bringing the prestige,

weight and influence of the said defendant THOMAS F. JOHNSON'S official position to bear upon them, presenting assertions, arguments and allegations, and otherwise acting on behalf of the said J. KENNETH EDLIN and WILLIAM L. ROBINSON to influence and persuade the said officials of the said Department of Justice in order to obtain favorable decisions and actions in and upon the aforesaid proceeding, charge and accusation, to wit, the postponement of the trial of the charges contained in the said indictment and the eventual dismissal of the said indictment.

United States Code, Title 18, Sections 281 and 2.

SEVENTH COUNT

And the Grand Jury for the District of Maryland further charges:

That on or about August 7, 1961, in the District of Maryland, THOMAS F. JOHNSON, herein named a defendant, being duly elected a Member of Congress, and after his election and qualification as such and during his continuance in office, acting jointly and in concert with FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON, also named as defendants herein, the said FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON aiding, abetting, counselling, commanding, inducing and procuring the defendant THOMAS F. JOHNSON so to act, unlawfully, wilfully, knowingly and corruptly did receive, directly and indirectly, from the said J. KENNETH EDLIN and WILLIAM L. ROBINSON, compensation in the sum of Two Thousand Dollars ($2,000.00), to wit, the proceeds of a bank check bearing date August 4, 1961, being in the sum of $2,000.00, payable to Johnson and Johnson, and bearing the name of the defendant WILLIAM L. ROBINSON as maker, which said check was drawn on the Industrial National Bank of Miami, Florida, and deposited in, credited to, and final payment in the sum of $2,000.00

made thereon to the account of the said THOMAS F. JOHNSON at the Exchange and Savings Bank, Berlin, Maryland, on or about August 7, 1961, the date and place of the receipt of said check by the defendant THOMAS F. JOHNSON being to the Grand Jurors unknown, for services rendered and to be rendered by him, the said THOMAS F. JOHNSON, before the Department of Justice of the United States in relation to a proceeding, charge and accusation in which the United States was a party and directly interested, to wit: an indictment returned on November 17, 1959, in the United States District Court for the District of Maryland, being numbered 25038 on the dockets and records of said Court and styled, "United States of America vs. J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., a Maryland corporation, Rosabelle Edlin, and Jackson D. Rains," and which, as the defendants then and there well knew, was pending in said Court on August 7, 1961, the said services consisting of interceding and conferring with officials of the said Department of Justice, bringing the prestige, weight and influence of the said defendant THOMAS F. JOHNSON'S official position to bear upon them, presenting assertions, arguments and allegations, and otherwise acting on behalf of the said J. KENNETH EDLIN and WILLIAM L. ROBINSON to influence and persuade the said officials of the said Department of Justice in order to obtain favorable decisions and actions in and upon the aforesaid proceeding, charge and accusation, to wit, the postponement of the trial of the charges contained in the said indictment and the eventual dismissal of the said indictment.

United States Code, Title 18, Sections 281 and 2.

EIGHTH COUNT

And the Grand Jury for the District of Maryland further charges:

That on or about September 19, 1961, in the District of Maryland, THOMAS F. JOHNSON, herein named a de-

fendant, being duly elected a Member of Congress, and after his election and qualification as such and during his continuance in office, acting jointly and in concert with FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON, also named as defendants herein, the said FRANK W. BOYKIN, J. KENNETH EDLIN and WILLIAM L. ROBINSON aiding, abetting, counselling, commanding, inducing and procuring the defendant THOMAS F. JOHNSON so to act, unlawfully, wilfully, knowingly and corruptly did receive, directly and indirectly, from the said J. KENNETH EDLIN and WILLIAM L. ROBINSON, compensation in the sum of Fifteen Hundred Dollars ($1,500.00), to wit, the proceeds of a bank check bearing date September 12, 1961, being in the sum of $1,500.00, payable to Johnson and Johnson, and bearing the name of the defendant WILLIAM L. ROBINSON as maker, which said check was drawn on the Industrial National Bank of Miami, Florida, and deposited in, credited to, and final payment in the sum of $1,500.00 made thereon to the account of the said THOMAS F. JOHNSON at the Exchange and Savings Bank, Berlin, Maryland, on or about September 19, 1961, the date and place of the receipt of said check by the defendant THOMAS F. JOHNSON being to the Grand Jurors unknown, for services rendered and to be rendered by him, the said THOMAS F. JOHNSON, before the Department of Justice of the United States in relation to a proceeding, charge and accusation in which the United States was a party and directly interested, to wit: an indictment returned on November 17, 1959, in the United States District Court for the District of Maryland, being numbered 25038 on the dockets and records of said Court and styled, "United States of America vs. J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., a Maryland corporation, Rosabelle Edlin, and Jackson D. Rains," and which, as the defendants then and there well knew, was pending in said Court on September 19, 1961, the said services consisting of interceding and conferring with officials of the said Department of Justice,

bringing the prestige, weight and influence of the said defendant THOMAS F. JOHNSON'S official position to bear upon them, presenting assertions, arguments and allegations, and otherwise acting on behalf of the said J. KENNETH EDLIN and WILLIAM L. ROBINSON to influence and persuade the said Officials of the said Department of Justice in order to obtain favorable decisions and actions in and upon the aforesaid proceeding, charge and accusation, to wit, the postponement of the trial of the charges contained in the said indictment and the eventual dismissal of the said indictment.

United States Code, Title 18, Sections 281 and 2.

A TRUE BILL:

/s/ JOSEPH D. TYDINGS,
United States Attorney

DOCKET ENTRIES

1962

Oct. 16—Indictment for Viol. U.S.C., Title 18, Secs. 371; 281; and 2, filed. (Conspiracy to defraud the United States; Compensation to Member of Congress in matters affecting the Government; Aiding and Abetting).

Oct. 16—Requests of United States Attorney for issuance of Bench Warrant as to each Defendant, Recommendations as to Bails and Orders of Court (Northrop, J.) thereon, filed.

Oct. 16—Bench Warrant Issued as to Defendant Thomas F. Johnson (Cepi on Bail—17-Oct.-1962).

Oct. 16—Bench Warrant Issued as to Defendant Frank W. Boykin (Executed 18th October, 1962).

Oct. 16—Bench Warrant Issued as to Defendant J. Kenneth Edlin (Executed 18th October, 1962).

Oct. 16—Bench Warrant Issued as to Defendant William L. Robinson (Executed 18th October, 1962).

Oct. 17—Order (Northrop, J.) reducing bail as to Defendant Thomas F. Johnson to the amount of Five Thousand Dollars, ($5,000.00), filed. (See paper No. 2).

Oct. 17—Recognizance, as to Defendant Thomas F. Johnson, filed.

Oct. 22—Recognizance as to Defendant Frank W. Boykin, filed.

Oct. 26—Appearance of Harry Adelberg, Esquire as attorney for Defendant Thomas F. Johnson, Order filed.

Oct. 26—Appearance of Edward Bennett Williams, Esquire as attorney for Defendant Frank W. Boykin, Order filed.

Oct. 26—Appearance of Edward A. Palamara, Esquire as attorney for Defendant J. Kenneth Edlin (for the purpose of arraignment only), Order filed.

Oct. 26—Defendants arraigned and each plead "Not Guilty".

Nov. 26—Order of Removal as to Defendant J. Kenneth Edlin from the U. S. District Court for the Southern District of Florida, Miami Division together with Waiver of Removal Hearing, Appearance Bond and Certified copy of Indictment, filed.

Nov. 26—Order of Removal as to Defendant William L. Robinson from the U. S. District Court for the Southern District of Florida, Miami Division together with Waiver of Removal Hearing Appearance Bond and Certified copy of Indictment, filed.

Nov. 26—Motion of Defendant, William L. Robinson, for a Bill of Particulars, filed.

Nov. 26—Motion of Defendant, Thomas F. Johnson, for Bill of Particulars and Citations of authorities in support thereof, filed.

Nov. 26—Motion of Defendant, Frank W. Boykin, for Bill of Particulars and Memorandum in support thereof, filed.

Dec. 3—Appearance of Edward L. Genn, Esquire as attorney for Defendant J. Kenneth Edlin, Order filed.

Dec. 3—Motion of Defendant J. Kenneth Edlin for Bill of Particulars, filed.

Dec. 3—Supplemental Motion of Defendant J. Kenneth Edlin for a Bill of Particulars, filed.

Dec. 5—Answers of United States of America to Motion of Defendant Thomas F. Johnson for Bill of Particulars, filed.

Dec. 5—Answer of United States of America to Motion of Defendant Frank W. Boykin for Bill of Particulars, filed.

Dec. 5—Answer of United States of America to Motion of Defendant J. Kenneth Edlin for Bill of Particulars, filed.

Dec. 5—Answer of United States of America to Motion of Defendant, William L. Robinson for Bill of Particulars, filed.

Dec. 6—Answer of United States of America to Supplemental Motion of Defendant, J. Kenneth Edlin for Bill of Particulars, filed.

Dec. 7—Hearing on Motions of Defendants William L. Robinson, Thomas F. Johnson and Frank W. Boykin for Bills of Particulars; and Motion and Supplemental Motion of J. Kenneth Edlin for Bill of Particulars, before Thomsen, C. J.

Dec. 19—Bill of Particulars of Plaintiff, filed.

Dec. 26—Motion of Defendant J. Kenneth Edlin to Dismiss indictment and points and authorities in support thereof, filed.

Dec. 27—Motion of Defendant Frank W. Boykin for production of transcript of Grand Jury testimony and memorandum in support thereof and Affidavit, filed.

Dec. 27—Motion of Defendant Frank W. Boykin for production of documents &c., filed.

Dec. 27—Motion of Defendant Frank W. Boykin to Dismiss count one for duplicity, memorandum in support thereof and exhibits, filed.

Dec. 27—Motion of Defendant Frank W. Boykin to Dismiss counts two through eight for failure to state an offense against the United States and memorandum in support thereof, filed.

Dec. 27—Motion of Defendant Frank W. Boykin to Dismiss counts two through eight for failure to allege the commission of an offense within the District of Maryland and memorandum in support thereof, filed.

Dec. 27—Certificate of Service of Defendant Frank W. Boykin of Motions, filed.

Dec. 27—Motion of Defendant Thomas F. Johnson to Dismiss first count of indictment, filed.

Dec. 27—Motion of Defendant Thomas F. Johnson to Dismiss first count of indictment for lack of jurisdiction, filed.

Dec. 27—Motion of Defendant Thomas F. Johnson for production of documents, filed.

Dec. 27—Motion of Defendant Thomas F. Johnson to Dismiss all counts of the indictment for failure to show venue of the offenses charged within the District of Maryland, filed.

1963

Jan. 16—Transcript of proceedings before Thomsen, C. J. on December 7, 1962 Re: Motions of Defendants for Bills of Particulars, filed. (Filed Separately).

Jan. 18—Motion of Defendant Thomas F. Johnson to Dismiss the Substantive Counts of the Indictment, filed.

Jan. 19—Memorandum of United States of America in opposition to Motion of Defendant Frank W. Boykin, to dismiss Count 1 for duplicity, filed.

Jan. 19—Memorandum of United States of America in opposition to Motion of Defendant, Frank W. Boykin, to dismiss Counts 2 through 8, for failure to state an offense against the United States, filed.

Dec. 19—Answer of United States of America to Motion of Defendant, Frank W. Boykin, for Production of Transcript of Grand Jury testimony, filed.

Jan. 19—Answer of United States of America to Motion of Defendant, Thomas F. Johnson, for Production, filed.

Jan. 19—Answer of United States of America to Motion of Defendant, Frank W. Boykin, for Production under Rules 16 and 17 (c), filed.

Jan. 22—Memorandum of United States of America in opposition to Motion of Thomas F. Johnson to dismiss the first count of the Indictment for Lack of Jurisdiction, filed.

Jan. 22—Memorandum of United States of America in opposition to Motion of Thomas F. Johnson to dismiss the first count of the Indictment, filed.

Jan. 22—Memorandum of United States of America in opposition to Motion of Defendant Thomas F. Johnson to dismiss each and all counts of the Indictment by reason of their failure to show venue of the offenses charged within the District of Maryland, filed.

Jan. 22—Memorandum of United States of America in opposition to motions of Defendants Thomas F. Johnson and Frank W. Boykin for discovery, filed.

Jan. 22—Memorandum of United States of America in opposition to motion of Defendant Frank W. Boykin to

dismiss counts 2 through 8 for failure to allege the Commission of an offense within the District of Maryland, filed.

Jan. 22—Memorandum of United States of America in opposition to Motion of Defendant, J. Kenneth Edlin to dismiss Indictment, filed.

Jan. 25—Hearing on (1) Motion of Defendant J. Kenneth Edlin to Dismiss indictment and points and authorities in support thereof, (2) Motion of Defendant Frank W. Boykin for production of transcript of Grand Jury testimony and memorandum in support thereof and affidavit, (3) Motion of Defendant Frank W. Boykin for production documents &c, (4) Motion of Defendant Frank W. Boykin to Dismiss count one for duplicity, memorandum in support thereof and exhibits, (5) Motion of Defendant Frank W. Boykin to Dismiss counts two through eight for failure to state an offense against the United States and memorandum in support thereof, (6) Motion of Defendant Frank W. Boykin to Dismiss counts two through eight for failure to allege the commission of an offense within the District of Maryland and memorandum in support thereof, (7) Motion of Defendant Thomas F. Johnson to Dismiss first count of indictment, (8) Motion of Defendant Thomas F. Johnson to Dismiss first count of indictment for lack of jurisdiction, (9) Motion of Defendant Thomas F. Johnson for production of documents, (10) Motion of Defendant Thomas F. Johnson to Dismiss all counts of the indictment for failure to show venue of the offenses charged within the District of Maryland, before Thomsen, C. J.

Jan. 25—Argument of counsel not concluded, to be resumed at a later date.

Feb. 1—Affidavit in Support of Motion of the Defendant Thomas F. Johnson, for the Production of Documents, filed.

Feb. 1—Hearing on Motions of the Defendants (before

Thomsen, C. J.) continued from January 25, 1963, Argument not concluded, to be resumed at a later date.

Feb. 8—Supplemental Memorandum of United States of America in opposition to Motion of Defendant Frank W. Boykin to dismiss counts 2 through 8 for lack of jurisdiction, filed.

Jan. 12—Supplemental Memorandum of United States of America in opposition to Motion of Defendant Thomas F. Johnson to Dismiss the First Count of the Indictment for Lack of Jurisdiction and Appendix A and B, filed.

Feb. 8—Supplemental Memorandum of Defendant Frank W. Boykin in Support of Motion to Dismiss Counts 2 through 8 for Lack of Jurisdiction, filed.

Feb. 13—Argument of counsel on Motions of Defendants continued from Friday, February 1, 1963.

Feb. 13—Argued and held sub-curia.

Feb. 25—Supplemental Memorandum of Defendant Frank W. Boykin on Legislative Background, filed.

Feb. 27—Subpoenaes (45) on behalf of United States issued.

Feb. 28—Subpoena on behalf of United States issued.

Feb. 28—Opinion of the Court (Thomsen, C. J.) filed.

Mar. 8—Motion of Thomas F. Johnson for Reconsideration by the Court of its Decision denying the Production of his Grand Jury Testimony, filed.

Mar. 14—Subpoenaes (2) on behalf of the United States issued.

Mar. 19—Subpoenaes (2) on behalf of United States issued.

Mar. 20—Subpoena on behalf of United States issued.

Mar. 21—Subpoenaes (3) on behalf of United States issued.

Mar. 25—Voir Dire on behalf of the Government, filed.

Mar. 25—Voir Dire on behalf of Defendant Frank W. Boykin, filed.

Mar. 25—Voir Dire on behalf of Defendant Thomas F. Johnson, filed.

Mar. 25—Jurors examined on Voir Dire, not concluded.

Mar. 26—Examination of Jurors on Voir Dire resumed.

Mar. 26—Jury empannelled and sworn as to each Defendant before Thomsen, C. J.

Mar. 26—Subpoenaes (2) on behalf of United States, issued.

Mar. 28—Subpoenaes on behalf of the United States issued.

Mar. 28—Memorandum in Support of Government's Request for use of Montgomery County, Maryland Grand Jury Transcripts of Testimony of Thomas F. Johnson, and Frank W. Boykin, filed.

Mar. 28—Hearing on Oral Motion of the United States Attorney that the Sealed Transcript of the Testimony of the Defendant Thomas F. Johnson before the Grand Jury for Montgomery County, Maryland, be released to the Government, before Thomsen, C. J.

Mar. 28—Answer of Defendant Thomas F. Johnson to the verbal Motion of the United States Attorney that the sealed transcript of the testimony of the Defendant Thomas F. Johnson before the Grand Jury for Montgomery County, Md., be released to the Government, filed.

Mar. 28—Oral Opinion rendered by the Court directing that the Montgomery County Grand Jury Testimony be made available upon conditions more fully set forth orally from the Bench.

Mar. 29—Further hearing on various Motions before the Court (Thomsen, C. J.) Re Montgomery County Grand Jury Testimony, on which the Court ruled at the Bench.

Mar. 29—Memorandum in Support of Government's Request for Use of Montgomery County, Maryland Grand Jury Transcripts of Testimony of Thomas F. Johnson and Frank W. Boykin, filed.

Mar. 29—Opinion of the Court (Thomsen, C. J.) filed.

Mar. 29—Subpoena on behalf of United States issued.

Apr. 1—Hearing on various Motions before the Court (Thomsen, C. J.) on which the Court ruled at the Bench.

Apr. 1—Case trial begun before the Court (Thomsen, C. J.) and Jury.

Apr. 1—Not concluded.

Apr. 2—Subpoena on behalf of United States of America issued.

Apr. 2—Trial of case resumed, not concluded.

Apr. 3—Case continued—not concluded.

Apr. 4—Case continued—not concluded.

Apr. 8—Subpoenaes (3) on behalf of the United States of America issued.

Apr. 8—Case continued—not concluded.

Apr. 9—Subpoena duces tecum on behalf of the United States of America issued.

Apr. 9—Case continued—not concluded.

Apr. 10—Case continued—not concluded.

Apr. 11—Case continued—not concluded.

Apr. 15—Case continued—not concluded.

Apr. 15—Subpoena on behalf of the United States of America issued.

Apr. 16—Subpoena on behalf of the United States of America issued.

Apr. 17—Case continued—not concluded.

Apr. 18—Case continued—not concluded.

Apr. 18—Subpoena on behalf of the United States issued.

Apr. 18—Stipulation between the parties re: Authenticity requisition orders for speech delivered by Defendant Thomas F. Johnson, and attachments thereto, filed.

Apr. 22—Case continued—not concluded.

Apr. 23—Case continued—not concluded.

Apr. 23—Subpoena on behalf of United States of America issued.

Apr. 24—Motion of the Defendant Thomas F. Johnson for "Judgment of Acquittal" as to the 1st Count (the conspiracy charge) and with respect to the substantive counts, filed.

Apr. 24—Oral Motions of each of the Defendants Frank W. Boykin, J. Kenneth Edlin and William L. Robinson, for a "Judgment of Acquittal" as to the 1st Count of the Indictment, and with respect to the substantive counts, made at the close of the Government's evidence-in-chief.

Apr. 24—Hearing on Motions of each of the Defendants Thomas F. Johnson, Frank W. Boykin, J. Kenneth Edlin and William L. Robinson for Judgment of Acquittal as to the 1st count (the conspiracy charge) and with respect to the substantive counts.

Apr. 24—Argument of counsel concluded as to Motions of Defendants for Judgment of Acquittal as to each of substantive counts. Argument to be resumed as to Motions of Defendants for Judgment of Acquittal as to the 1st Count (The conspiracy charge).

Apr. 25—Argument of counsel on Motions of Defendants for Judgment of Acquittal as to the 1st Count (the conspiracy charge) continued.

Apr. 25—Motions of Defendants for Judgment of Acquittal as to each of the substantive counts and as to

the 1st Count (The conspiracy Charge) "denied" without prejudice in Open Court.

Apr. 29—Trial of case continued—not concluded.

Apr. 30—Case continued—not concluded.

May 1—Case continued—not concluded.

May 2—Case continued—not concluded.

May 6—Case continued—not concluded.

May 13—Case continued—not concluded.

May 14—Case continued—not concluded.

May 14—Hearing on Oral Motion of the Defendant Thomas F. Johnson to Supress testimony taken before the Grand Jury, before Thomsen, C. J.

May 14—Testimony not concluded to be resumed.

May 15—Hearing on Oral Motion of the Defendant Thomas F. Johnson to Suppress testimony taken before the Grand Jury continued from May 15, 1963.

May 15—Oral Opinion of the Court "Overruling" Motion of the Defendant Thomas F. Johnson to Suppress Grand Jury Testimony for reasons more fully set forth orally from the Bench.

May 15—Trial of case resumed from Tuesday, May 14, 1963. Case continued—not concluded.

May 20—Case continued—not concluded.

May 21—Case continued—not concluded.

May 22—Renewed Oral Motion of Defendant J. Kenneth Edlin for Mis-Trial, "overruled" by the Court.

May 22—Case continued—not concluded.

May 23—Case continued—not concluded.

May 27—Case continued—not concluded.

May 28—Case continued—not concluded.

May 29—Case continued—not concluded.

June 3—Case continued—not concluded.

June 3—Subpoenaes (3) on behalf of the United States, issued.

June 4—Case continued—not concluded.

June 5—Subpoena on behalf of the United States issued.

June 5—Case continued—not concluded.

June 6—Case continued—not concluded.

June 10—Case continued—not concluded.

June 11—Renewed Oral Motion of Defendant Frank W. Boykin for Judgment of Acquittal as to the 1st Count of the Indictment (the Conspiracy Charge) and with respect to each of the substantive counts, made at the close of all the evidence. Motion "Denied" by the Court.

June 11—Renewed Oral Motion of Defendant J. Kenneth Edlin for Judgment of Acquittal as to the 1st Count (The Conspiracy Charge) of the Indictment and with respect to each of the Substantive Counts, made at the close of all the evidence. Motion "denied" by the Court.

June 11—Renewed Oral Motion of Defendant William L. Robinson for Dismissal and for Judgment of Acquittal as to the 1st Count (the Conspiracy Charge) of the Indictment and with respect to each of the Substantive Counts, made at the close of all the evidence. Motion "denied" by the Court.

June 11—(82) Motion of the Defendant Thomas F. Johnson, for a Judgment of Acquittal Under the First Count (The Conspiracy Charge) of the Indictment, and with respect to each of the Substantive Counts filed at the close of all the evidence, filed.

June 11—(83) Order of Court (Thomsen, C. J.) "denying" Motion of the Defdt. Thomas F. Johnson for a Judgment of Acquittal under the First Count (the Con-

spiracy Charge) of the Indictment, and with respect to each of the substantive counts, filed. (See Pleading No. 82.)

June 11—(84) Motions of the Defendant Thomas F. Johnson to strike Government Exhibit No. 6, and to strike testimony of FBI Special Agents Robert Milne and Strickland, as to verbal statements made to them & etc., filed.

June 11—(85) Order of Court (Thomsen, C. J.) "granting" Motion of the Defendant Thomas F. Johnson to Strike Government Exhibit No. 6, and "denying" Motion of the Defendant Thomas F. Johnson to strike testimony of Special Agents Robert Milne and Strickland, fd. (See Pleading No. 84.)

June 11—Argument of counsel—not concluded.

June 12—Argument of counsel resumed—not concluded.

June 13—Argument of counsel concluded.

June 13—(86) Government's (8) Prayers, filed.

June 13—(87) Defendant Thomas F. Johnson's Prayers, filed.

June 13—(88) Defendant Frank W. Boykin's (21) Prayers, filed.

June 13—(89) Defendant J. Kenneth Edlin's (33) Prayers, filed.

June 13—Court's Charge-to-the Jury.

June 13—Bailiffs (Joseph Schildt and Timothy Gavin) sworn.

June 13—Verdict as to Defendant Thomas F. Johnson: "Guilty" as to each of Counts Nos. 1 to 8 inclusive.

June 13—Verdict as to Defendant Frank W. Boykin: "Guilty" as to each of Counts Nos. 1 to 8 inclusive.

June 13—Verdict as to Defendant J. Kenneth Edlin: "Guilty" as to each of Counts Nos. 1 to 8 inclusive.

June 13—Verdict as to Defendant William L. Robinson: "Guilty" as to each of Counts Nos. 1 to 8 inclusive.

June 13—Imposition of sentence as to each of Defendants Thomas F. Johnson, Frank W. Boykin, J. Kenneth Edlin and William L. Robinson postponed pending filing of Motions for New Trial.—Time for filing Motion for New Trial and Judgment N.O.V. extended to July 10, 1963.

July 10—(90) Motion of Defendant, Frank W. Boykin for Judgment of Acquittal Notwithstanding the verdict or, in the alternative, for a New Trial, and Memorandum in support thereof, filed.

July 10—(91) Motion of Defendant, J. Kenneth Edlin, for New Trial and/or Motion in Arrest of Judgment, and/or Motion for Judgment of Acquittal Notwithstanding the Verdict; Points and Authorities in support thereof, filed.

July 10—(92) Motion of Defendant, Thomas F. Johnson, for a Judgment of Acquittal, Notwithstanding the Verdicts and, in the alternative, Motion for New Trial, and Affidavit, filed.

July 15—(93) Motion of Defendant, William L. Robinson for Judgment of Acquittal Notwithstanding the Verdict or, in the alternative, for a New Trial, and Memorandum in support thereof, filed.

July 26—(94) Memorandum of the United States of America in Opposition to Motions of all Defendants for Judgment of Acquittal, N.O.V., or in the alternative, for a New Trial, filed.

Aug. 5—Hearing on Motions of the Defendants Thomas F. Johnson, Frank W. Boykin, J. Kenneth Edlin and William L. Robinson for Judgment N.O.V. or in the alternative for a new trial, before Thomsen, C. J.

Aug. 5—Oral Opinion rendered by the Court (Thomsen, C. J.) "overruling" Motions of Defendants for Judgment N.O.V. or in the alternative for a New Trial.

Aug. 5—(95) Order of Court (Thomsen, C. J.) "overruling" Motion of the Defendant Frank W. Boykin for Judgment of Acquittal N.O.V. or in the alternative for a new trial, filed. (See Paper No. 90.)

Aug. 5—(96) Order of Court (Thomsen, C. J.) "overruling" Motion of the Defendant J. Kenneth Edlin for Judgment of Acquittal N.O.V. and or to arrest Judgment and to grant a new trial, filed. (See Paper No. 9.)

Aug. 5—(97) Order of Court (Thomsen, C. J.) "overruling" Motion of the Defendant Thomas F. Johnson for a Judgment of Acquittal N.O.V. and in the Alternative for a new trial, filed. (See Paper No. 92) p. 13.

Aug. 5—(98) Order of Court (Thomsen, C. J.) "overruling" Motion of the Defendant William L. Robinson for Judgment of Acquittal N.O.V. or in the Alternative for a New Trial, filed. (See paper No. 93.)

Aug. 16—(99) Opinion of the Court (Thomsen, C. J.) Re: "Denial of all Motions," fd.

Oct. 7—(100) Waiver of Defdt. Frank W. Boykin, to be present at the imposition of sentence, and to make any statement in his own behalf and present any information in mitigation of punishment, Consent of United States Attorney thereon and Affidavit, filed.

Oct. 7—(101) Opinion of Court Thomsen, C. J. Re: Waiver of Defendant of his right to be present at imposition of sentence under Rules 43 and 32(a), fd.

Oct. 7—(102) Judgment as to Defendant Thomas F. Johnson: That the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) Months and that the defendant pay a fine of Five Thousand Dollars ($5,000.00), without commitment in default of payment of said fine, as to Count No. 1; that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) Months as to each of Counts Nos.

2, 3, 4, 5, 6, 7 and 8; said terms of imprisonment to run concurrently, making a total term of imprisonment of Six (6) Months as to Counts Nos. 2, 3, 4, 5, 6, 7 and 8. Term of imprisonment imposed as to Count No. 1 to run concurrently with term of imprisonment imposed as to Counts Nos. 2 through 8 inclusive, making a total term of imprisonment of Six (6) Months and defendant to pay ¼ costs of case. Service of sentence to begin on November 4, 1963 at ten o'clock A.M., Order (Thomsen, C. J.), filed.

Oct. 7—(103) Judgment as to Defendant Frank W. Boykin: That the defendant pay a fine of Five Thousand Dollars ($5,000.00) on each of Counts Nos. 1 to 8 inclusive; said fines to be cumulative, making a total fine of Forty Thousand Dollars ($40,000.00) and Defendant to pay ¼ costs of case. Imposition of sentence as to imprisonment suspended and defendant released on probation for the period of Six (6) Months, upon condition that the fines be paid within three (3) Months, Order (Thomsen, C. J.), filed.

Oct. 7—(104) Judgment as to Defendant J. Kenneth Edlin: That the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year as to each of Counts Nos. 1 to 8 inclusive, said terms of imprisonment to run concurrently making a total term of imprisonment of One (1) Year; defendant to become eligible for parole at such time as the Board of Parole may determine, pursuant to U. S. C., Title 18, Section 4208(a)(2); and Defendant to pay a fine of Two Thousand Dollars ($2,000.00) as to each of Counts Nos. 1 to 8 inclusive, said fines to be cumulative making a total fine of Sixteen Thousand Dollars ($16,000.00), without commitment in default of payment of said fine and defendant to pay ¼ costs of case. Service of sentence to begin on November 4, 1963 at 10:00 o'clock A.M., Order (Thomsen, C. J.), filed.

Oct. 7—(105) Judgment as to Defendant William L. Robinson: That the Defendant is hereby committed to the

custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) Months as to each of Counts Nos. 1 to 8 inclusive; said terms of imprisonment to run concurrently, making a total term of imprisonment of Six (6) Months and Defendant to pay ¼ costs of case. Service of sentence to begin on November 4, 1963 at 10:00 o'clock A.M., Order (Thomsen, C. J.), filed.

Oct. 14—(106) Petition of Defendant, William L. Robinson, Affidavit and Order (Thomsen, C. J.) authorizing Petitioner to file Notice of Appeal and to proceed on appeal in forma pauperis, filed.

Oct. 14—(107) Notice of Appeal of Defendant, William L. Robinson, filed. (Service admitted by U. S. Attorney.)

Oct. 15—(108) Notice of Appeal of Defendant, Thomas F. Johnson, filed. (Service admitted by U. S. Attorney.)

Oct. 16—(109) Notice of Appeal of Defendant J. Kenneth Edlin, filed. (Service admitted by U. S. Attorney.)

Oct. 17—Statement of Docket Entries and an attested William L. Robinson and Attested copies of Petition of Defendant, Affidavit, Order of Court authorizing Petitioner to file Notice of Appeal, etc., and Notice of Appeal, transmitted to Clerk, United States Court of Appeals, Fourth Circuit, Richmond 19, Virginia.

Oct. 17—Statement of Docket Entries as to Defendant copy of the Notice of Appeal, as to Defendant Thomas F. Johnson, transmitted to Clerk, United States Court of Appeals, Fourth Circuit, Richmond 19, Virginia.

Oct. 17—Statement of Docket Entries and an attested copy of the Notice of Appeal, as to Defendant J. Kenneth Edlin, transmitted to Clerk, United States Court of Appeals, Fourth Circuit, Richmond 19, Virginia.

Oct. 17—(110) Election of Defendant, Thomas F. Johnson, not to commence service of sentence, filed.

Oct. 25—(111) Designation of Defendant William L. Robinson as to contents of Record on Appeal, filed.

Oct. 25—(112) Designation of Defendant Thomas F. Johnson as to contents of Record on Appeal, filed.

Oct. 28—(113) Designation of Defendant J. Kenneth Edlin as to contents of Record on Appeal, filed.

Oct. 31—(114) Recognizance pending appeal as to Defendant J. Kenneth Edlin, filed.

Oct. 31—(115) Recognizance pending appeal as to Defendant Thomas F. Johnson, filed.

Nov. 6—(116) Recognizance of Defendant William L. Robinson on appeal, filed.

Nov. 19—(117) Motion of Defendants, Thomas F. Johnson, J. Kenneth Edlin and William L. Robinson and Order (Watkins, J.) that the time for transmitting the record on appeal be extended until December 13, 1963, filed.

Dec. 6—(118) Transcript of Proceedings before the Court (Thomsen, C. J.) on January 25, 1963; February 1, 1963; April 1, 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 29, 30, 1963; May 1, 2, 6, 13, 14, 15, 20, 21, 22, 23, 27, 28, 29, 1963; June 3, 4, 5, 6, 10, 11, 12, 13, 1963 and December 7, 1963, filed. (Filed separately.)

Dec. 10—(119) Motion of Defendant, Edlin and Order (Watkins, J.) that the time for filing the record on appeal in the Court of Appeals for the Fourth Circuit is hereby extended to and including December 24, 1963, filed.

Dec. 20—(120) Petition of Harry B. Wolf, Jr., Director of the State Department of Building, Savings and Loan Associations, by Doris P. Scott, Esq., Affidavit and Order (Thomsen, C. J.) consented to, authorizing and directing the Clerk to deliver unto Petitioner certain Government's Exhibits as therein more particularly set forth, &c, filed.

PRE-TRIAL OPINION

THOMSEN, Chief Judge

Defendants in this eight-count indictment found by the Grand Jury for the District of Maryland are: Thomas F. Johnson and Frank W. Boykin, who at all times mentioned in the indictment were Members of the House of Representatives of the United States from Maryland and Alabama respectively; J. Kenneth Edlin, who is alleged to have dominated and controlled certain savings and loan associations and land companies, which are named as co-conspirators but not indicted; and William L. Robinson, a lawyer, who is alleged to have been a director and officer of those associations and companies.[1]

The First Count charges a conspiracy, in violation of 18 U.S.C.A. 371,[2] among defendants and others "to defraud the United States of and concerning its governmental functions and rights", in specified particulars summarized below under the heading "The Indictment". Each of the seven other counts charges that, in violation of 18 U.S.C.A. 281 and 2,[3] Johnson, acting in concert with and aided and

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[1] Boykin is alleged to have dominated and controlled a co-conspirator, Tensaw Land and Timber Company.

[2] "§ 371. *Conspiracy to commit offense or to defraud United States*

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"* * *"

[3] "§ 281. *Compensation to Members of Congress, officers, and others in matters affecting the Government*

"Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

"* * *"

See also 1962 Pocket Part, 18 U.S.C.A. 281.

abetted by the other defendants, directly or indirectly received compensation from Edlin and Robinson for services rendered and to be rendered by Johnson before the Department of Justice in relation to a charge, accusation and indictment against Edlin et al.

Each defendant has filed a number of motions, or adopted those filed by other defendants; they will be discussed under the following headings:

I. Motions to Dismiss the First Count

A. Jurisdiction—Art. 1, sec. 6, cl. 1 of the Constitution

B. Duplicity

C. Vagueness—Improper Use of Charge of Conspiracy to Defraud the United States.

II. Motions to Dismiss the Substantive Counts (Second to Eighth)

A. Venue

B. Claimed Failure to Charge an Offense Against the United States

C. Payor as Aider and Abettor

III. Motions for Discovery

A. Grand Jury Testimony

B. Other

The Indictment

1. The First Count, the conspiracy count, after identifying defendants and their alleged co-conspirators and referring to an indictment against Edlin et al. in the District of Maryland, charges in paragraph 14 that from on or about April 1, 1960, and continuously thereafter until on or about December 31, 1961, defendants and their co-conspirators

conspired in Maryland and elsewhere to defraud the United States "of and concerning its governmental functions and rights", described in four sub-paragraphs as: (a) its right to have the business of the Department of Justice conducted free from improper and undue influence; (b) its right to have the personnel of that Department free to transact its official business unhindered by the exercise upon them of corrupt, unlawful, improper and undue pressure and influence; (c) its right to have the duties of Johnson and Boykin in their official capacities as Members of the House performed free from corruption resulting from their personal and pecuniary interest in the success of Edlin et al. in attempting to persuade the Department of Justice to cause the postponement of the trial and the eventual dismissal of the indictment against Edlin et al; and (d) its right not to be deprived of the faithful services of Johnson and Boykin in their official capacities as Members of the House uninfluenced by corruption and by payments of money and other valuable considerations to them by the other defendants and co-conspirators as compensation for services rendered and to be rendered by Johnson in behalf of the other defendants and co-conspirators in relation to matters pending in the House, and for services rendered and to be rendered by Johnson and Boykin before the Department of Justice in relation to proceedings, charges and accusations in which the United States is a party and directly interested.

The First Count then sets out in paragraphs 15 to 25 that it was a part of the conspiracy: (para. 15) that Johnson should, at the request of Edlin and Robinson, render services for compensation to them and their co-conspirators, namely, the making of a speech on the floor of the House defending "the operations of Maryland's 'independent' savings and loan associations, the financial stability and solvency thereof, and the reliability and integrity of the 'commercial insurance' on investments made by said 'independent' savings and loan associations, on the floor of the House of Representatives"; (para. 16) that Johnson,

Edlin and Robinson would cause to be reprinted 50,000 copies of said speech for distribution to prospective depositors in the aforesaid savings and loan associations, to members of the General Assembly of Maryland, and to others; and (paras. 17-25) that Johnson and Boykin should at the request of the other defendants and their co-conspirators render specified services for compensation in relation to the aforesaid indictment, bringing the prestige, weight and influence of their official position to bear upon the officials of the Department of Justice to obtain decisions and actions beneficial to defendants and their co-conspirators, particularly the postponement of the trial and the eventual dismissal of the indictment.

Seventy-five overt acts to effect the objects of the alleged conspiracy are specified. Reference is made to 18 U.S.C.A. 371.

2. The Second Count charges that on or about April 3, 1961, in the District of Maryland, Johnson, being then a Member of Congress, acting jointly and in concert with and aided and abetted by the other defendants, **unlawfully,** wilfully and corruptly received, directly or indirectly, from Edlin and Robinson, compensation in the amount of $800.00, to wit, the proceeds of a bank check drawn by Robinson on a certain bank in Miami, Florida, which was "deposited in, credited to and final payment in the sum of $800.00 made thereon to the account of" Johnson at the Exchange and Savings Bank, Berlin, Maryland, the date and place of the receipt of said check by Johnson being to the Grand Jurors unknown, for services rendered and to be rendered by Johnson before the Department of Justice in relation to the proceeding, charge and accusation referred to in the First Count. Reference is made to 18 U.S.C.A. 281 and 2.

3, 4, 5, 6. The Third, Fourth, Fifth and Sixth Counts are similar to the Second Count except for dates and amounts and the allegation that the checks referred to in those four counts were drawn by one of the alleged

co-conspirators on the National Bank of Bethesda-Chevy Chase, Bethesda, Maryland.

7, 8. The Seventh and Eighth Counts are similar to the Second Count except for dates and amounts of the checks.

I.

Motions to Dismiss the First Count

A.

JURISDICTION—ART. 1, SEC. 6, CL. 1 OF THE CONSTITUTION

Johnson, Edlin and Robinson have moved[4] to dismiss the First Count for lack of jurisdiction on the ground that the prosecution of the offense charged therein is barred by Art. 1, Sec. 6, Cl. 1 of the Constitution, which provides:

> "The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses and going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place."

Defendants do not cite any authority which holds that the quoted clause bars the prosecution of a Member of Congress for accepting money for making a speech on the floor of the House of which he is a member, nor for participating in a conspiracy of which that is an incident. They rely on the doctrine of the separation of powers, on the importance thereto of the privilege granted by the clause, and on the statements contained in opinions dealing with civil actions rather than criminal prosecutions. The importance of the doctrine and of the privilege is universally recognized. The question here, however, is the scope of the prohibition contained in the clause.

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[4] Boykin has not filed a similar motion.

The historical background of the clause is reviewed at length in *Kilbourn v. Thompson,* 103 U.S. 168, 201 et seq., and in *Tenney v. Brandhove,* 341 U.S. 367; that discussion need not be repeated here.

Both of those cases were civil actions, one for false arrest and the other for deprivation of civil rights. They hold that the clause should be liberally construed to cover voting and other official action by legislators, as well as speeches and debates. Other cases hold that the question whether a matter is before the House should also be liberally construed. See, e.g., *Cochran v. Couzens,* D.C. Cir., 42 F.2d 783; *Barsky v. United States,* D.C. Cir., 167 F.2d 241. Defendants rely heavily on the following passage in *Coffin v. Coffin,* 4 Mass. 1 (a civil action for slander), construing the Massachusetts Constitution: "These privileges are thus secured not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. I therefore think that the article ought not to be construed strictly but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate, but will extend it to the giving of a vote, to the making of a written report and to every other act resulting from the nature and in the execution of the office. And I will define the article as securing to every member exemption from prosecution for everything said or done by him as a representative in the exercise of the functions of that office. * * *"

That passage from *Coffin* was quoted with approval in *Kilbourn,* 103 U.S. at 204. It should be noted, however, that the opinion in *Kilbourn* went on to say: "It is not necessary to decide here that there may not be things done, in the one House or the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible." 103 U.S. at 204. The

caveat was reiterated by the Supreme Court in *Tenney*, 341 U.S. at 378-89.

Without question, the clause should be liberally construed to accomplish its purpose—the freedom of legislators from fear of prosecutions, whether civil or criminal, for words spoken, or votes cast, or actions taken in the pursuit of their lawful functions. But neither the statutes, the decisions, nor the text writers suggest that the purpose of the clause would be aided by a construction which would shield a legislator from prosecution for bribery or from prosecution for a conspiracy of the nature charged herein.

Congress has repeatedly enacted statutes providing for criminal prosecution in the courts of a Member of Congress for bribery and graft, including the taking of money for his action, vote or decision. See 18 U.S.C.A., 1950 ed., sec. 201 et seq., especially sec. 205 and sec. 281. See also 1962 supp., sec. 201 et seq., especially sec. 203. The debates in Congress when the first of such acts was adopted—unanimously—do not show that anyone questioned its constitutionality.[5] Nor does it appear that any question of constitutionality was raised when Congress adopted the statute which was in effect in 1961 or the present statutes which were adopted in 1962.

The Supreme Court pointed out in *Tenney*, 341 U.S. at 375, n. 5, that provisions generally similar to Art. 1, sec. 6, cl. 1 of the United States Constitution appear in the constitutions of most of the states. Practically all of those states also have statutes making the acceptance by legislators of compensation from private individuals a criminal offense.[6] It does not appear that any prosecution under

[5] Cong. Globe, 37 Cong., 2d Sess., pp. 3260, 3261, 3262 (1862). See also 8 Cong. Deb. 2511 et seq. (1832) dealing with the assault by General Sam Houston on a fellow Member of Congress.

[6] See Ala. Code ch. 21, sec. 72 (1958), Ala. Code ch. 21, sec. 64 (1958); Ariz. Rev. State Ann., ch. 2, secs. 13-286 (1956); Ark. Stat. Ann. ch. 9, secs. 41-901 (1947); Colo. Rev. Stat. Ann. art. 7, sec. 40-7-5 (1953), Colo. Rev. Stat. Ann. art. 7, sec. 40-7-7 (1953); Conn. Gen. Stat. Ann. ch. 942, secs. 53-149 (1960); Ga. Code Ann. ch. 26-41, secs. 26-4102 (1953), Ga. Code Ann. ch. 26-50, secs. 26-5023 (Cum. Supp. 1961), Ga. Code Ann. ch. 26-42, secs. 26-4203 (1953), Ga. Code Ann. ch. 26-42

any of those statutes has ever been held to violate the constitutional privilege. Indeed, it does not appear that the question has ever been raised. See *People v. Logie,* 321 Mich. 303, 32 N.W.2d 458; *People v. Hammond,* 132 Mich. 422, 93 N.W. 1084; *State v. Burns,* 238 Mo. App. 220, 177 S.W.2d 909; *State v. Sullivan,* 110 Mo. App. 75, 84 S.W. 105. See also *Hemans v. United States,* 6 Cir., 163 F.2d 228.

Leading text writers also indicate that the purpose of the provisions is to prevent the prosecution of any action, civil or criminal, for words spoken, for libel or slander, and historically for treason or sedition.[7] No authority has been cited or found which suggests that the clause was intended to bar criminal prosecutions based on the acceptance of money for speeches, votes or other legislative acts.

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secs. 26-4201 (1953); Idaho Code ch. 47, secs. 18-4704 (1947); Ill. Stat. Ann. ch. 38, secs. 38-78 (1935), Ill. Stat. Ann. ch. 38, secs. 38-79 (1935); Ind. Stat. Ann. ch. 6, sec. 10-601 (1956); Kan. Gen. Stat. Ann. ch. 21, sec. 21-825 (1949); Ky. Stat. Rev. ch. 432, sec. 432.350 (1955); La. Stat. Rev. ch. 1, sec. 14.118 (1951); Me. Stat. Rev. ch. 135, sec. 5 (1954); Md. Code Ann. art. 27, sec. 23 (1957); Mass. Laws Ann. ch. 268, sec. 8 (1956); Mich. Stat. Ann. ch. 286a, sec. 28.313 (1938); Minn. Stat. Ann. ch. 613, sec. 613.05 (1947), Minn. Stat. Ann. ch. 613, sec. 613.06 (1947); Mo. Stat. Ann. ch. 558, sec. 558.020 (1953); Mont. Rev. Code ch. 29, sec. 94-2906 (1947); Neb. Stat. Rev. ch. 28, sec. 28-706 (1943); N.H. Stat. Rev. Ann. ch. 587, sec. 587.26 (1955), N.H. Stat. Rev. Ann. ch. 587, sec. 587.27 (1955); N.J. Stat. Ann. ch. 93, sec. 2A: 93-2 (1939); N.M. Stat. Ann. art. 8, sec 40-8-1 (1953), N.M. Stat. Ann. art. 8, sec. 40-8-3 (1953); N.Y. Penal Code, sec. 1328; N.D. Code Ann. ch. 12-09, sec. 12-09-09; Ohio Rev. Code Ann. ch. 2917, sec. 2917.01 (1953); Okla. Stat. Ann. ch. 7, sec. 309 (1951); Ore. Stat. Rev. ch. 162, sec. 162.230 (1959); Pa. Stat. Ann. tit. 18, art. 3, sec. 4303 (1939); R.I. Gen. Laws ch. 7, sec. 11-7-3 (1956); S.D. Code ch. 1310, sec. 13.1009 (1939); Tenn. Code Ann. ch. 8, sec. 39-802 (1955); Tex. Penal Code art. 159 (1925); Utah Code Ann. art. 2, sec. 76-28-18 (1953); Vt. Stat. Ann. tit. 13, ch. 21, sec. 1102 (1958); Va. Code ch. 6, art. 2, sec. 18.1-279 (1950); Wash. Rev. Code Ann. ch. 9.18, sec. 9.18.020; W. Va. Code art. 5, sec. 6003 (1961); Wis. Stat Ann. ch. 946, sec. 946.10 (1957); Wyo. Stat. ch. 8, sec. 6-156 (1957). Arkansas, Maryland, Pennsylvania and Texas have provisions in their Constitutions making acceptance by a public official of compensation to influence him in his official capacity a criminal offense. See Ark. Const. Art. V, sec. 35; Md. Const. Art. III, sec. 50; Pa. Const. Art. 3, sec. 29; and Tex. Const. Art. 16, sec. 41.

[7] 2 Cooley, *Constitutional Limitations,* p. 929 (8th ed. 1927); 1 Tucker, *Constitution,* sec. 207 (1899); 1 Willoughby, *Constitution of the United States,* sec. 342 (2d ed. 1929).

It appears from the foregoing discussion that the prosecution of a Member of Congress for receiving money from a private person for making a speech on the floor of the House would not be barred by Art. 1, sec. 6, cl. 1 of the Constitution. *A fortiori,* the prosecution of the offense charged in Count One of the present indictment is not barred. The making of the speech was but an incident of the conspiracy charged, which is alleged to have included the reprinting by Johnson, Edlin and Robinson of 50,000 copies of the speech for distribution to prospective depositors in the two savings and loan associations named as co-conspirators, among others, as well as various actions by the alleged conspirators in connection with the indictment pending against Edlin, et al. To hold Count One of the present indictment barred by the privilege would subvert rather than advance the purpose for which the privilege exists—the independence of the legislator in the fulfillment of his public trust. II James Wilson's Works 156 (1804); *Hemans,* 163 F.2d at 234; *United States v. Glasser,* 7 Cir., 116 F.2d 690, 696, 315 U.S. 60, 66; *United States v. Manton,* 2 Cir., 107 F.2d 834, 839.

The motions to dismiss Count 1 for lack of jurisdiction are hereby denied.

B.

DUPLICITY

Defendants' motions to dismiss the First Count for duplicity are without merit. They admit that one conspiracy may have two or more objects, but they contend that the First Count charges two conspiracies, one involving the preparation, making and distribution of a speech before the House of Representatives and one involving the services of Johnson before the Department of Justice in connection with the indictment against Edlin et al. The Court does not so construe the First Count. It charges a single conspiracy to defraud the United States of and concerning its governmental functions and rights which are set out in subparagraphs (a), (b), (c) and (d) of

paragraph 14, and charges that the conspiracy had various objects or parts, which, together with the means used to accomplish them, are set out in paragraphs 15 to 25 of Count One. The parts or objects of the conspiracy so charged all deal with the general subject of Edlin's connection with two savings and loan associations operating in Maryland named as co-conspirators herein, with the commercial insurance of the investments of such associations, and with the indictment against Edlin and others on charges arising out of the operation of the two associations. All of the services alleged to have been rendered by Johnson, both in his speech and in his dealings with the Department of Justice, were in connection with these matters.

What was said in *May v. United States*, D.C. Cir., 175 F.2d 944, 1002, applies here.[8] See also *Pinkerton v. United States*, 328 U.S. 640; *Frohwerk v. United States*, 249 U.S. 204, 210; *Travis v. United States*, 10 Cir., 247 F.2d 130; *United States v. Lennon*, 2 Cir., 246 F.2d 24, cert. den. 355 U.S. 836; *United States v. Manton*, 2 Cir., 107 F.2d 835.

If the evidence fails to sustain the charge of a single conspiracy, the point can be raised by an appropriate motion. *Kotteakos v. United States*, 328 U.S. 750; *Berger v. United States*, 295 U.S. 78.

C.

VAGUENESS—IMPROPER USE OF CHARGE OF CONSPIRACY TO DEFRAUD THE UNITED STATES

Johnson has moved to dismiss the First Count on the ground that it violates the Fifth and Sixth Amendments to the Constitution by depriving him of his right to be informed of the nature and cause of the accusation, by

[8] The basis for the dissent by Judge Stephens on this point in *May* does not exist in the instant case. Count I of the indictment in *May* charged a conspiracy both to violate old sec. 203 and to defraud the United States. The conspiracy charged in the instant case is a conspiracy to defraud the United States; a purpose to violate sec. 281 is not charged as part of the conspiracy.

charging him with participation in a conspiracy, the purpose of which are so vague, general and indefinite that he is not apprised of the offense charged, is unable to prepare his defense, and may not be able to plead former jeopardy in the event of a second prosecution. He further contends that a count charging the second alternative of sec. 371[9]—a conspiracy to defraud the United States—may not be used when the acts charged amount to substantive offenses in violation of other statutes.

Counsel for Johnson first refers to the criticism which the Supreme Court and other federal courts have leveled at the indiscriminate use of conspiracy indictments. See, e.g., *Kotteakos v. United States,* 328 U.S. 772; *Krulewitch v. United States,* 336 U.S. 440; *Grunewald v. United States,* 353 U.S. 391; *United States v. Falcone,* 2 Cir., 109 F.2d 579. This Court is aware of that criticism, and is also aware that the Supreme Court has not forbidden the use of such an indictment in a proper case. Under the authorities cited to support this Court's conclusion on the various points discussed herein, the inclusion of the conspiracy count in the present indictment was not improper.

Counsel then argues that the original of sec. 371, which proscribes conspiracies "either to commit any offense against the United States or to defraud the United States, or any agency thereof in any manner or for any purpose", was passed shortly after the Civil War primarily to deal with tax violations. He criticizes the federal judiciary for broadening the classes of cases to which the statute has been held applicable; see *Haas v. Henkel,* 216 U.S. 462, 476-481, *Hammerschmidt v. United States,* 265 U.S. 182, and numerous cases in the inferior federal courts, such as *United States v. Manton,* 2 Cir., 107 F.2d 834, *May v. United States,* D.C. Cir., 175 F.2d 994, and *United States v. Bowles,* D.Me., 183 F. Supp. 237. He says: "Although the effort of the Supreme Court in the *Hammerschmidt* case to restrict the language inadvertently used in *Haas*

[9] See note 2, above.

was commendable, the new definition of 'defrauding' was still too broad." The definition in *Hammerschmidt* of which counsel complains read as follows: "To conspire to defraud the United States means primarily to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane or the overreaching of those charged with carrying out the governmental intention." 265 U.S. at 188. This language has been construed in *Manton, May, Bowles,* and other cases to permit the prosecution of counts generally similar to the First Count in the indictment under consideration. Counsel cites an article, 68 Yale L. J. 405, criticizing the use of counts charging a conspiracy to defraud the United States by dishonest means, and suggesting that Congress should repeal or amend the statute. Nevertheless, this Court should follow the law as laid down by the Supreme Court and other federal courts.

The argument that the alleged objects of the conspiracy are so vague, broad and indefinite that they give defendants no adequate notice of the offense charged, misconstrues the nature and objects of the conspiracy. The First Count charges, in paragraph 14, a conspiracy to defraud the United States of and concerning its governmental functions and rights hereinafter described. Subparagraphs (a), (b), (c) and (d), which immediately follow, state the rights referred to.[10] They are not, as Johnson's brief assumes, purposes of the conspiracy. The purposes, parts or objects of the conspiracy are set out in paragraphs 15 to 25 of the First Count, together with the means to be used to accomplish the purposes. Thereafter 75 overt acts are alleged, as having been done and performed in pursuance of and in order to effect the objects of the con-

[10] See summary of those paragraphs under "The Indictment" *supra.*

spiracy. The government has conceded what appears to me required by the allegations of the First Count, that it will not attempt to prove any purposes and objects of the conspiracy except those set out in paragraphs 15 to 25. So construed, as I think it must be, the First Count gives defendants adequate notice of the offense charged, more than sufficient to meet the requirements of the Fifth and Sixth Amendment and of Rule 7(c), F. R. Crim. P., 18 U.S.C.A.

It is true that the First Count does not allege a conspiracy "to cheat the Government out of property or money", and that it does not *in haec verba* allege interference with or obstruction of lawful governmental functions "by deceit, craft or trickery, or at least by means that are dishonest". But it does not follow that the charge fails to meet the test laid down in *Hammerschmidt*. Paragraphs 15 to 25 contain allegations of the means used to defraud the United States of its rights enumerated in subparagraphs (a), (b), (c) and (d) of paragraph 14. This Court believes that the means charged are dishonest means. See discussion of the *Hammerschmidt* rule in *Bowles*, 183 F. Supp. at 245-247, and the discussion under **II. B., below.**

Finally, counsel contends that a charge of a conspiracy to defraud may not be made when the indictment as a whole shows that violations of specific statutes are involved. He contends that such a prosecution must be brought for the violation of the specific statutes or for a conspiracy to violate those statutes under the first alternative of sec. 371. No authority is cited to support this proposition, which is at odds with the prevailing practice, and would unreasonably restrict the preparation of an indictment for conspiracy where repeated violation of several statutes by several persons are incidents of a single broad conspiracy to defraud the United States of its governmental functions and rights. If the government fails to prove the conspiracy charged, defendants will not be without remedy.

* * * * * *

All motions to dismiss the First Count are hereby denied, without prejudice to the rights of defendants to raise similar points by motions at the conclusion of the government's case or at the close of all the evidence.

II.

Motions to Dismiss the Second to Eighth Counts

A.

Venue

Johnson and Boykin have moved to dismiss Counts 2 through 8 of the indictment for lack of venue, on the ground that those Counts fail to allege that any violation of 18 U.S.C.A. 281 occurred within the District of Maryland. Robinson has adopted these motions.

A prosecution under sec 281[11] may be brought only in the District where the Congressman or other officer rendered the services or agreed to render the services, or where he received the compensation or agreed to receive the compensation. In none of the substantive counts is it charged that Johnson rendered any services or agreed to render any services in the District of Maryland, nor is it alleged that Johnson agreed in Maryland to receive any compensation. Accordingly, the jurisdiction of this Court with respect to those counts must rest on a sufficient allegation that Johnson received compensation within the District of Maryland.

Each substantive count (Second through Eighth) charges that in the District of Maryland, Johnson, a duly elected Member of Congress, acting jointly and in concert with, and aided and abetted by the other defendants, unlawfully, wilfully, knowingly and corruptly did receive, directly and indirectly, compensation in a specified amount, to wit, the proceeds of a bank check payable to the order of Johnson and Johnson, which was deposited

[11] Set out in note 3 *supra*.

in, credited to and final payment made thereon to the account of the said Thomas F. Johnson at the Exchange and Savings Bank, Berlin, Maryland, the date and place of the receipt of the check by the defendant Thomas F. Johnson being to the Grand Jurors unknown. In the Third, Fourth, Fifth and Sixth Counts, the checks are alleged to have been drawn on the National Bank of Bethesda-Chevy Chase, Bethesda, Maryland; in the Second, Seventh and Eighth Counts, the checks are alleged to have been drawn on the Industrial National Bank of Miami, Florida.

Defendants have taken the position that compensation is received in the District in which a check is delivered and only in that District; that the place where a check is cashed or deposited for collection and the place where it is ultimately paid are immaterial; and that since it is alleged that the place where Johnson received the check is unknown to the Grand Jurors, the indictment fails to allege venue in this District.

The government contends that compensation was received in each instance at the place where the proceeds of the checks were made available to Johnson; that each substantive count alleges that Johnson received compensation in the State of Maryland in a specified amount, to wit, the proceeds of a specified check which was deposited in, credited to and final payment made thereon to Johnson's account at a specified bank in Berlin, Maryland; and, therefore, that the receipt of compensation in the State of Maryland has been sufficiently alleged. As an alternative contention, the government argues that when payment is made by check, the receipt of compensation in violation of sec. 281 is a continuing offense which does not end until the proceeds of the check have been made fully available to the offender; thus, there may be venue in more than one District if the check is deposited in one District and paid in another.

The meaning of the words "receives * * * compensation", as they are used in this section, was discussed by

the Supreme Court in *Burton v. United States,* 196 U.S. 283. Burton was a Congressman, who was charged in certain counts of an indictment with illegally receiving compensation in the form of checks drawn on a bank in St. Louis, Missouri. The indictment, which was brought in the Eastern District of Missouri, charged both that Burton received the checks and that the checks were paid in that District. The evidence showed that the checks had in fact been received in the District of Columbia and deposited there in the Riggs Bank, which had given immediate credit to Burton and had then sent the checks to Missouri for collection. The trial judge left to the jury the decision where compensation had been received. The Supreme Court held that under the undisputed facts and the applicable banking law the Riggs Bank was not acting as Burton's agent in collecting those checks, but that title to the checks passed in the District of Columbia to the Riggs Bank, which in contemplation of law had purchased the checks; and that venue with respect to those counts could not be laid in Missouri, where the checks were ultimately paid. The Court also held that it was not a case where an offense was commenced in one district and completed in another, rejecting the contention of the government that the offense had begun when the checks were mailed from Missouri to the District of Columbia.

Since in *Burton* the checks were physically delivered to the Congressman in the District of Columbia and immediate credit thereon given to him by the Riggs Bank in that District, defendants argue that *Burton* is no authority for the proposition that venue lies where the checks were deposited and credit given rather than where they were physically delivered. However, the entire discussion of venue in the opinion of the Supreme Court was devoted to the law and facts with respect to the deposit of the checks, the credit given and the payment of the checks. Mr. Justice Harlan dissented only because he felt that Burton had received at St. Louis compensation for his services, since the checks were paid there to his representative, the collecting bank. The government rightly argues that if the

place of physical delivery of the checks were the only place where venue might be laid, the entire discussion in *Burton* would have been beside the point. In this contention the government is supported by the following dictum of Judge Learned Hand in *United States v. Lotsch*, 2 Cir., 102 F.2d 35, 36: "Next, it is argued that the crime was committed when Lotsch took the cheques—that is in Manhattan—and not when he cashed them in Brooklyn. That was indeed held in Commonwealth v. Donovan, 170 Mass. 228, 49 N.E. 104; but State v. Walls, 54 Ind. 561, is to the contrary, and so is United States v. Green. D.C., 137 F. 618. Burton v. United States, 196 U.S. 283, 25 S. Ct. 243, 49 L. Ed. 482, favors the Indiana rule, at least by implication, because, if the receipt of the cheque be the offence, that would have been a short answer to the prosecution, for Burton concededly got the cheque in Washington."

The controlling words in sec. 281, "receives * * * compensation", are different from the controlling words in the various sections of Chapter 11 of Title 18, sec. 201 et seq., as they have read from time to time, which refer variously to the receipt of "money", "checks" or "things of value", or use other expressions.

The case of *United States v. Green*, N.D.N.Y., 136 Fed. 618, cited by Judge Hand, construed a bribery statute which made it an offense to tender "any contract, undertaking, obligation, gratuity, or security for the payment of money, or the delivery or conveyance of anything of value." The Court held that a check was not a "thing of value". Congress then amended the statute there involved by adding the word "check" before the word "contract". See Reviser's note to 18 U.S.C.A. 201. Defendants argue that since no similar amendment was made to what is now sec. 281, it must be assumed that Congress felt the term compensation included checks, even though they were not "things of value", and, therefore, that no amendment to sec. 281 was necessary. This argument ignores the probability that if Congress gave any consid-

eration to sec. 281 at that time, it was satisfied with the construction given to that section by the Supreme Court in *Burton*.[12]

The question presented by the motions presently under consideration is whether venue lies (a) where the checks were physically delivered to Johnson; (b) where the proceeds of the checks were credited to his account, either at the time of deposit or after they had been collected; (c) where the check was paid by the drawee bank; or (d) in two or more of those places.

Questions of venue are more than matters of procedure; they raise issues of public policy in the light of which legislation must be construed. *Travis v. United States*, 364 U.S. 631, 634. When venue is based solely on the receipt of compensation, there are some arguments in favor of construing the statute to mean that compensation is received at the place where a check is delivered. But this Court must be guided by the opinion in *Burton*, which, as Judge Learned Hand said in *Lotsch*, implies that the crime is committed where the check is converted into money by the Congressman, not where it is physically delivered to him.

The application of *Burton* to the case at bar is made difficult by the circumstances that the Maryland banking law is different from the banking law in effect in the District of Columbia at the time of *Burton*, as found by the majority opinion therein. Maryland has enacted the Bank Collection Code, Art. 11, secs. 118-134, Anno. Code of Md., 1957 ed., Sec. 119 thereof reads:

> "Except as otherwise provided by agreement and except as to subsequent holders of a negotiable instru-

[12] The point is not clarified by the 1962 amendments, which apparently ignoring the decision in *Green*, use the single expression "anything of value" in the new bribery statute, sec. 201, although various other expressions are used in succeeding sections of ch. 11, including new secs. 203-209. The word "compensation" has been carried over from sec. 281 to sec. 203 so far as Members of Congress and certain other officials are concerned. See sec. 2 of Pub. L. 87-849, Oct. 23, 1962, 78 Stat. 1126; 18 U.S.C.A., 1962 Pocket Part, secs. 201, 203 et seq., 281.

ment payable to bearer or endorsed specially or in blank, where an item is deposited or received for collection, the bank of deposit shall be agent of the depositor for its collection and each subsequent collecting bank shall be subagent of the depositor but shall be authorized to follow the instructions of its immediate forwarding bank and any credit given by any such agent or subagent bank therefor shall be revocable until such time as the proceeds are received in actual money or an unconditional credit given on the books of another bank, which such agent has requested or accepted. Where any such bank allows any revocable credit for an item to be withdrawn, such agency relation shall nevertheless continue except the bank shall have all the rights of an owner thereof against prior and subsequent parties to the extent of the amount withdrawn."

Since the indictment alleges that Johnson received in the District of Maryland "compensation, to wit, the proceeds of" the specified checks, which are alleged to have been "deposited in, credited to and final payment made thereon to the account of "Thomas F. Johnson" at a specified bank in Berlin, Maryland, it appears that Johnson is charged with having received compensation in Maryland, with the *Burton* opinion.

What the evidence may show is another matter.[13] If

[13] The government states the evidence will show that each check specified in Counts 2 through 8 was endorsed by Johnson in blank, that immediately upon the deposit of each such check Johnson was given credit on his account upon which he could draw, and that the credit was never revoked. This statement cannot change the effect of the indictment, but it is not inconsistent therewith. If the evidence shows that the checks were endorsed in blank, the following provision of sec. 121 will have to be considered: "Where a deposited item is * * * endorsed by the depositor in blank * * * the fact that such item is so * * * endorsed shall not change the relation of agent of the bank of deposit to the depositor, but the subsequent holders shall have the right to rely on the presumption that the bank of deposit is the owner of the item." This provision is criticized as anomalous by the draftsmen of the Uniform Commercial Code, Comments, Art. 4, secs. 4-201, but it is the statutory law of Maryland and other States. This Court does not construe that provision, however, as changing the relationship between the depositor and the depositary bank, in the absence of a specific agreement. See Art. 11, sec. 119.

the facts show that the Berlin bank was acting as Johnson's agent in collecting checks, and that the circumstances were such that under the applicable law the checks should be considered as having been converted into money when and where they were paid by the dra vee banks, venue would lie in the District of Maryland with respect to the four counts dealing with checks drawn on the Bethesda, Maryland, bank (Counts, 3, 4, 5 and 6) and not with respect to the three counts dealing with the checks drawn on the Miami, Florida, bank (Counts, 2, 7 and 8) unless the offense can be considered as having been begun in one District and completed in another, within the meaning of 18 U.S.C.A. 3237.[14]

The government argues that it may be so considered, citing *Benson v. Henkel,* 198 U.S. 1. In that case the evidence showed that the defendant mailed cash from San Francisco, California, to an official of the Department of the Interior at Washington, D. C., and the defendant, who was indicted for bribery in the District of Columbia, challenged venue. The Court treated the case as covered by sec. 731, which provided, like present sec. 3237, that when an offense is begun in one District and completed in another it shall be deemed to have been committed in either, and may be tried in either, as though it had been wholly committed therein. In the instant case, the government argues, the receipt of compensation may be regarded as having been begun when Johnson deposited the checks (or even where they were physically delivered to him), but was not completed until the checks were finally cashed, so that venue may properly be laid either in the District

[14] "§ 3237. *Offenses begun in one district and completed in another*

"Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

"Any offense involving the use of the mails, or transportation in interstate or foreign commerce, is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce or mail matter moves."

where the checks were deposited or in the District where they were cashed. It is true that in *Burton* the Court said: "This is not a case of the commencement of a crime in one district and its completion in another, so that under the statute the court in either district has jurisdiction. Rev. Stat. sec. 731; 1 Comp. Stat. p. 565. There was no beginning of the offense in Missouri. The payment of the money was in Washington, and there was no commencement of that offense when the officer of the Rialto Company sent the checks from St. Louis to defendant. The latter did not thereby begin an offense in Missouri." 196 U.S. 283, at 304. The first sentence of that passage must be read in connection with the point argued, shown by the balance of the quotation. Even if the first sentence should be construed more broadly, as intended to cover also the conversion of the checks into money, the conclusion stated therein would not apply here, because the facts and the applicable law are different. In *Burton* the Supreme Court held that title to the checks, which had been delivered to the Congressman in the District of Columbia, had passed to the Riggs Bank in that District, since the bank had in legal effect purchased the checks from the Congressman. Under the present Maryland law, applicable in the instant case, if the Berlin bank were acting as agent of Johnson in converting the checks to cash, the offense of receiving may well be considered as having been begun when the checks were deposited in the Berlin bank and not completed until they were paid by the drawee banks or until the credit to Johnson's account was made unconditional.

It is unfortunate that questions of venue should turn upon the banking law of the place where the checks were deposited, but that appears to be the teaching of *Burton*. The government might have avoided the problem in this case by prosecuting the charges made in the Second to Eighth Counts in the District of Columbia, where the services are alleged to have been rendered. But the government had the right to seek an indictment either in the

District where the services were rendered or in the District where compensation was received.

At the present time it is only necessary to rule that under the applicable law the seven substantive counts (Second through Eighth) sufficiently allege that Johnson received compensation in the District of Maryland, and that the motion to dismiss those counts for lack of venue must be denied.

Claimed Failure to Charge an Offense Against The United States

Defendants have moved to dismiss the substantive counts (Second to Eighth) on the ground that those counts fail to state an offense against the United States committed by defendant Johnson, and therefore fail to state an offense committed by the other defendants as aiders and abettors.[15] They contend: (1) that the services were rendered by Johnson as an attorney in connection with a prosecution against Edlin and others, then pending before this District Court; (2) that sec. 281 does not prohibit a Member of Congress from receiving compensation for representing a client in court, even though the United States is a party or is interested in the case, and therefore should not be construed to prohibit him from conferring with officials of the Department of Justice in connection with the court proceeding; and (3) that no offense under sec. 281 was committed unless the compensation was received for services rendered for the purpose of obtaining favorable decisions and actions in relation to a proceeding, charge, accusation or other matter pending before a department; that the Department of Justice had no power to decide or act upon a request to postpone or dismiss the Edlin indictment, since this power rested with the Court, and therefore that there was no proceeding,

[15] A charge against an alleged aider and abettor must fall if no sufficient charge is made against the principal. *Meredith v. United States*, 4 Cir., 238 F.2d 535, 542. See also *United States v. Tornabene*, 3 Cir., 222 F.2d 875; *Edwards v. United States*, 5 Cir., 286 F.2d 681; *Karrell v. United States*, 9 Cir., 181 F.2d 981.

charge, accusation or other matter pending before the Department.

These points will be considered in order:

(1) The indictment nowhere alleges that Johnson is a lawyer, but charges him for his actions as a Member of Congress and not as an attorney acting for a client. The Court may take judicial notice of the fact that Johnson is a member of the bar, but may also take notice of the fact that he did not enter his appearance for any of the defendants in the indictment against Edlin et al, which was pending in this Court. It does not appear from the indictment in the instant case or from any of the motions filed herein that Johnson told the officials of the Department of Justice that he was appearing before them or acting as an attorney representing any of the defendants named in the indictment against Edlin et al.

(2) Sec. 281 does not prohibit a Member of Congress from receiving compensation for appearing in a court proceeding even though the United States is a party or otherwise interested. Congressional Globe, pt. 1, 38th Cong., 1st sess. (1863-64), pp. 63, 555-56, 561. See also 42 Cong. Rec. (1908), pp. 1895-1898; *Burton v. United States,* 202 U.S. 344, 365; *United States v. Waldin,* E.D. Pa., 122 F. Supp. 903; *United States v. Adams,* D.N.D., 115 F. Supp. 731; *United States v. Quinn,* E.D.N.Y., 111 F. Supp. 870.

It is not necessary to decide on the pending motions to what extent a Member of Congress who has entered his appearance publicly for a defendant in a criminal case pending in a federal court may act outside the court room to persuade officials or employees of the Department of Justice to take or refrain from taking any specific action in that case. Cf. *Chudoff v. McGranery,* 3 Cir., 179 F.2d 869. It is difficult, perhaps impossible, to draw a line if the Congressman is openly appearing as an attorney for the accused. But that is not the situation presented by this indictment and by these motions.

The main purpose of sec. 281 is "to secure the integrity of executive action against undue influence upon the part of members of that branch of the Government whose favor may have much to do with the appointment to, or retention in, public position of those whose official action it is sought to control or direct. The evils attending such a situation are apparent and are increased when those seeking to influence executive officers are spurred to action by hopes of pecuniary reward." *Burton v. United States*, 202 U.S. at 368. See also *United States v. Quinn*, S.D.N.Y., 141 F. Supp. 622, 624. The evils are further increased if the Member of Congress fails to disclose the fact that he is appearing as an attorney for compensation and not as a disinterested public official.

None of the cases cited by either the government or defendants is directly in point, but they have been helpful in clarifying the issue.

Although the statute must be strictly construed, it should be construed to accomplish its purpose, as defined by the Supreme Court, and to prevent the mischief at which it was aimed. All "court related activities" are not excluded from its operation. Under the facts charged in the indictment and appearing from the motions, see discussion under (1) above, the pendency in court of the indictment against Edlin et al. at the time Johnson is alleged to have rendered services for compensation before the Department of Justice does not of itself preclude a prosecution under sec. 281.

(3) Defendants' third point assumes that there was no violation of sec. 281 unless the proceeding, charge, accusation or other matter was *pending* before the Department. They argue that since the indictment against Edlin et al. was pending before this Court, there was nothing pending before the Department of Justice on which it could act. However, the word "pending" does not appear in sec. 281. The words "before any department, agency", etc. refer to where the services have been rendered or are to be rendered, not where the proceeding or other matter is

pending. This conclusion is supported by the way the offense was stated in the second *Burton* opinion, where the Supreme Court, construing a predecessor statute which used similar language, said: "But we cannot doubt the authority of Congress by legislation to make it an offense against the United States for a Senator, after his election and during his continuance in office, to agree to receive or to receive compensation for services to be rendered or rendered to any person, before a Department of the Government, in relation to a proceeding, matter or thing in which the United States is a party or directly or indirectly interested." 202 U.S. at 365. See also *Waldin*, 122 F. Supp. at 905, and the Report of the Judiciary Committee of the House in connection with the 1962 statute above referred to, which makes it clear that the new statute, like the old, is intended to embrace all matters that come before a Federal department or agency.[16]

Defendants argue that the Department was without power to postpone or dismiss the court proceeding. Nevertheless, the Department had power to request a postponement and to move to dismiss the indictment. Rule 48(a), F. R. Crim. P., 18 U.S.C.A. That was the determination and action by the Department sought by Johnson, according to the indictment. The fact that Court approval would be necessary to accomplish a final dismissal of the indictment is not fatal to the charge made in the Second to Eighth Counts. *Felder v. United States*, 2 Cir., 9 F.2d 872, 874.

C.

PAYER AS AIDER AND ABETTOR

Edlin and Robinson have moved to dismiss the substantive counts as against them on the ground that one who pays money to a Member of Congress is not an aider and abettor of the crime of receiving compensation pro-

[16] H.R. Rep. No. 748, 87th Cong., 1st Sess., July 20, 1961, p. 20.

scribed by sec. 281.[17] So stated, the proposition presents a serious legal question, which has been answered differently by different judges. See *May v. United States,* D.C. Cir., 175 F.2d 994, 1002 et seq., with dissenting opinion by Judge Stephens, 175 F.2d at 1011, 1018, et seq., and *United States v. Bowles,* D.Me., 183 F. Supp. 237. See also *Gebardi v. United States,* 287 U.S. 112; *Nigro v. United States,* 8 Cir. 117 F.2d 624; and *Lott v. United States,* 9 Cir., 205 Fed. 28. It is not necessary, however, to answer that question at this time. Each of the seven substantive counts charges Edlin and Robinson, as well as Boykin, with "aiding, abetting, counselling, commanding, inducing and procuring" the commission of the offense. A bill of particulars, furnished at defendants' request, states that Boykin, Edlin and Robinson "aided, abetted, counselled, commanded, induced and procured" Johnson in the rendering of the services alleged as well as in the receipt of the compensation alleged. The manner in which the several defendants are claimed to have aided and abetted the planning and performance of the services is specified in detail in the bill of particulars. If the evidence shows that Edlin and Robinson did nothing to aid and abet the alleged offenses except to make the payments charged in the several counts, they may raise the point on motion for judgment of acquittal. But the allegations contained in the substantive counts of the indictment are sufficient. *United States v. Quinn,* E.D.N.Y., 111 F. Supp. 870.

* * * * * *

All motions to dismiss the Second to Eighth Counts are hereby denied, without prejudice to the rights of defendants to raise similar points by motions at the conclusion of the government's case or at the close of all the evidence.

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[17] They argue that where a statute defines as criminal an act which necessarily requires the participation of two persons, and the statute specifically makes only one of those persons criminally liable, this is evidence of a legislative intention to leave the conduct of the other unpunished.

III.

Motions for Discovery

A.

Grand Jury Testimony

Boykin and Johnson have each moved, pursuant to Rule 6(e), F. R. Crim. P., for an order directing production of a transcript of their respective testimony given before the grand jury which returned the indictment in this case. Both of them voluntarily accepted an opportunity to testify before the grand jury; neither was summoned.

Boykin has supported his motion by his own affidavit and by a letter from George W. Calver, M.D., the attending physician to the Congress of the United States, which has been admitted in evidence in support of his motion without objection from the government. From the affidavit and certificate, it appears: that Boykin testified before the grand jury on October 12, 1962; that he had been a patient at the U. S. Naval Hospital at Bethesda, Maryland, from September 29 until October 10; that his appearance before the grand jury was against the advice both of the medical officers at the Hospital and of Dr. Calver, who had told Boykin that he should take at least a week to recover from his cardiac difficulties and to get his strength back; that Boykin had a difficult time making the trip to Baltimore; that he was weak, particularly while testifying before the grand jury, and that he was under physical and emotional strain. Boykin also states that he has not been able to remember with clarity or to inform his attorneys about the testimony which he gave at the grand jury hearing; that his home in Mobile, Alabama, and his office in Washington, D. C., were burglarized on or about March 4, 1962, and, following the burglaries, a number of documents referred to in the First Count were missing.

Johnson has supported his motion by an affidavit that he was interrogated by the United States Attorney for several hours on September 25, 1962, and produced certain records which had been requested; that he recalls clearly some of his testimony, but by reason of the length of the testimony, the intensity at times with which it was conducted, and the fact that he was tired, physically and mentally, from his work in the House of Representatives and his vigorous campaign for reelection, he does not recall a considerable part of his testimony; that he seeks an opportunity to inspect and copy the transcript of his testimony before the grand jury in order that he may prepare adequately in advance of the trial his defense to the accusations contained in the indictment.

In response to a request from the Court, the government has stated that it has not yet decided whether it will use the testimony of Borkin as part of its case in chief against him, and will not decide until a week or so before the trial. The government made the same statement with respect to the possible use of Johnson's testimony.

The long established policy of the federal courts, firmly entrenched in this Circuit and this District, is to preserve the secrecy of grand jury proceedings. Disclosure of grand jury testimony should rarely be granted and then only under "compelling circumstances", upon a showing of "particularized need". *Pittsburgh Plate Glass Co. v. United States,* 360 U.S. 395, 399; *United States v. Proctor & Gamble Co.,* 356 U.S. 677, 681; *United States v. Socony Vacuum Oil Co.,* 310 U.S. 150, 234; *United States v. Kahaner,* S.D.N.Y., 203 F. Supp. 78, 86; *United States v. Wortman,* E.D. Ill., 26 F.R.D. 183, 206.

The facts alleged in support of Johnson's motion are similar to those in *Kahaner,* where Judge Weinfeld said: "Undoubtedly most persons who appear before grand juries as prospective defendants are under some emotional tension. However, it would indeed be unusual for any person, whether calm or under stress, to recall the precise details of his questioning. If this were an ade-

quate basis upon which to require disclosure of testimony, the grand jury minutes should be made available as a matter of course to any witness who is later indicted. Perhaps this should be the rule. While there are those, including this Court, who believe that in an enlightened system of criminal justice defendants who have made voluntary statements to prosecution and investigation officials should, as a matter of simple fairness, receive copies of their statements, such view has not yet found general favor and admittedly there does not appear any doctrinal trend in that direction. To grant this motion on the sole ground advanced would not only breach the historic policy against disclosure of grand jury matters, but would initiate a precedent which appears foreclosed by the rationale of the recently decided Murray case."[18] 203 F. Supp. at 87. There is no showing that Johnson was not in full possession of his faculties when he gave his testimony; nor is any reason suggested why his present version of the facts should differ from the original.

Johnson has shown no "compelling circumstances" or "particularized need" for the disclosure of his testimony at this time.[19] His motion is hereby denied, without prejudice to his right to renew the motion if and when the government decides to offer his grand jury testimony as part of the case in chief. This Court intimates no option as to what its ruling would then be.

Boykin's motion presents a different situation. His poor physical condition at the time he testified is supported not only by his own affidavit but by the certificate of the attending physician to the Congress. Under all the circumstances, the Court feels that Boykin has shown a "particularized need" to examine his testimony at this time, so that he may know the incidents which he may be called upon to admit, deny or explain, and to prepare his defense. His motion is hereby granted.

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[18] *United States v. Murray*, 2 Cir., 297 F.2d, 820-22.

[19] If the general rule is to be charged it should be done by the Supreme Court, perhaps by an amendment to the Criminal Rules. This Court adheres to the general rule.

B.

OTHER

Defendants requested the disclosure of various items believed to have been in the possession of the government. The Court understands that all such questions have now become moot, either because the government has made the material available to defendants or because the government has stated that it does not have the particular document requested.

Chief Judge, U. S. District Court

[Tr. 6256-6306]:

CHARGE OF THE COURT TO THE JURY

(The Court) Members of the jury, the time has now come for me to charge the jury, that is, to instruct you as to the law of the case.

As I think you already know, the functions of the judge and the jury are quite different. It is my duty, as judge, to instruct you as to the law applicable to this case. It is your duty to accept without question for the purposes of the case the statements which I make to you about the law. But is the province of the jury, your province, to determine the facts from the evidence.

In my instructions to you on the law of the case, I may refer to some of the evidence for purposes of illustration or for advisory help in the application of the law to the facts as the jury may find the facts. But I emphasize again that it is the sole power, duty and function of the jury to appraise the evidence and to determine from the evidence what are the facts in the case, and that any reference I may make to the evidence is advisory only and it is in no way binding on you.

What I may say to you about the facts—I may say that I expect to say very little, because the facts have been

fully argued to you by counsel on both sides within the last two or three days.

What I may say to you about the facts is not intended to convey to you any opinion that I may have about the guilt or innocence of any of the defendants, nor to imply that I have any such opinion, nor is it intended to convey any opinion I may have as to how any of the questions of fact in the case should be answered.

I have not intended to express or to intimate any opinion as to what witnesses are worthy of belief or disbelief. I have not intended to express or intimate any opinion as to what disputed facts are established, or what facts have not been established. I have also not intended to express or intimate any opinion as to what inferences should be drawn from the evidence.

You and only you are the judges of the facts. If any expression of mine or anything I may or may not have done or said has seemed to indicate any opinion relating to any of these matters, I instruct you to disregard it.

In determining the guilt or innocence of the defendants and any subsidiary questions of fact involved in the case, you may consider not only the evidence to which I may refer, and the evidence to which you may have been referred by counsel in their arguments, but you may also consider any testimony or exhibits in the case, whether or not referred to by me or by counsel, which you may believe to be material in determining the question of the defendants' guilt or innocence on any of the counts of the indictment. My reference to certain facts does not of course give them any greater or different significance than you would otherwise ascribe to them. In the course of the trial I have asked questions of some of the witnesses. This was done solely to develop information. Neither the questions nor the answers thereto have any other or different or greater significance than they would have if the questions had been asked by any of the counsel.

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience.

The statements of counsel are not evidence and should not be considered as evidence unless such statement or statements were made as admissions or stipulations conciding the existence of a fact or facts.

You must not consider for any purpose any evidence offered and rejected or which has been stricken out by the Court; such testimony is not evidence in this cause and is to be completely disregarded. Most of the evidence has been admitted generally and may be considered for or against all of the defendants. However, I have instructed you from time to time that some of the evidence is not admissible against one or more of the defendants.

In deciding the case against a particular defendant, you are to decide this case solely upon the evidence that has been admitted by the Court as to that defendant, and the inferences that you may reasonably draw as to that defendant and such presumptions as the law affords as to that defendant.

At times throughout the trial the Court has been called upon to pass upon the admissibility of certain offered evidence. You should not be concerned with such rulings or the reasons for them. Whether evidence which has been offered is admissible or is not admissible is purely a question of law, and from a ruling on such question you are not to draw any inference. In admitting evidence, to which an objection has been made, the Court does not determine what weight should be given to such evidence. You must not guess what the answer might have been to any question to which an objection was sustained and you must not speculate as to the reason the question was asked or the reason for the objection. Every defendant has the right to object to

any evidence offered against him, to obtain from the Court the legal opinion of the Court as to whether such evidence is admissible and, if admissible, for what purposes and to what extent. You are not to infer that any objection to evidence had any other purpose. The same is true with respect to any objections which may have been made by the Government.

This is a criminal case. There are certain rules which apply to criminal cases generally, to which I will now refer.

An indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, and does not create any presumption or permit any inference of guilt. A defendant cannot be convicted except upon the determination of the truth of one or more of the charges by the unanimous verdict of the jury.

Another rule applicable to criminal cases is that a defendant is entitled to the presumption of innocence. This presumption attends him throughout the trial, and the burden of overcoming this presumption rests upon the government, which must establish a defendant's guilt by evidence beyond a reasonable doubt with respect to every essential element of the particular count under consideration.

From the beginning of the trial to the end, the government has the burden of establishing beyond a reasonable doubt, every fact essential to the conviction of the defendants; the defendants have no burden to sustain, and have no duty to prove that they did not commit the alleged crime; it is enough if their evidence taken with the government's raises a reasonable doubt of guilt, in which event they must be acquitted.

A reasonable doubt means a doubt founded upon reason. It does not mean a fanciful doubt, or a whimsical or capricious doubt, for anything relating to human affairs and depending upon human testimony is open to some possible or imaginary doubt.

A reasonable doubt is such a doubt as would cause reasonable men to hesitate to act in matters of importance to themselves.

When all the evidence in the case, carefully analyzed, compared and weighed by you, produces in your minds a settled conviction or belief of a defendant's guilt, such a conviction as you would be willing to act upon in matters of the highest importance relating to your own affairs, when it leaves your minds in such a condition that you feel an abiding conviction amounting to a moral certainty of the truth of the charge, then, and in that event, you would be free from a reasonable doubt. Absolute or mathematical certainty is not required, but there must be such certainty as satisfies your reason and judgment, and upon which you feel conscientiously entitled to act.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross examination of witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence.

The jury should not reach a verdict based on conjecture or speculation, nor on sympathy or emotion of any kind in favor of a defendant or against a defendant, either generally, or in this particular case. You should find your verdicts on the evidence, that is, the testimony of the witnesses testifying under oath and the documents admitted in evidence as exhibits.

The defendants are on trial only for the offenses charged in the indictment and not for any act or conduct not charged in the indictment.

You should not consider in any way in your deliberations any fact, opinion or impression you may have held or re-

ceived before the trial or may have received during the trial except from the evidence in the case.

You are, however, expected to use your good sense; to consider the evidence only for those purposes for which it has been admitted and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. A witness is presumed to speak the truth. But this presumption may be outweighed by the manner in which the witness testifies, by the character of the testimony given, or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and his demeanor and manner while on the stand. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be effected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently, and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or willful falsehood. If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, and such weight, if any, as you may think it deserves.

A witness may be discredited or impeached by contradictory evidence, or by evidence that at other times the witness has made statements which are inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars, and you may reject all the testimony of that witness or give it such weight and credibility as you may think it deserves.

All evidence of a witness whose self-interest or attitude is shown to be such as might tend to prompt testimony unfavorable to the accused, should be considered with caution and weighed with great care.

Consider the interest or lack of interest of any witness in the case, including that of the defendants who have testified, the witness' interest in the outcome of the case, whether the witness has any bias or feeling about it, the witness' relationship or friendship with the parties in interest, the defendants or the government, the witness' means of knowledge of the facts he testifies to, and professes to know and understand, his chance or opportunity to know the facts about which he testifies, the reasonableness or unreasonableness of the testimony given, whether the witness has made contradictory statements or not about material matters involved in the case. Use your own good judgment and sound common sense in this matter in passing on the weight you will give to a witness' testimony. Bring to the task, members of the jury, your knowledge of human nature; your common sense and your ability to judge men. By these methods and any others that are proper and reasonable and just to determine the truth, pass on and determine the credibility of the witness and the weight that you will give to the testimony.

Conduct of a defendant, including statements made and acts done upon being informed that a crime has been committed, or upon being confronted with a criminal charge, may be considered by the jury in the light of other evidence in the case, in determining the guilt or innocence of the accused.

When a defendant voluntarily offers an explanation or makes some statement tending to establish his innocence, and such explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. It is reasonable to infer that an innocent person does not ordinarily find it necessary to invent or fabricate a voluntary explanation or statement tending to establish his innocence.

Whether or not the evidence with respect to a defendant's voluntary explanation or statement points to a consciousness of guilt, and the significance, if any, to be attached to such evidence, are matters for determination by you, the jury.

You are to consider all the instructions as a whole and regard each in the light of all the others.

Unless otherwise indicated, each instruction given should be considered by you as referring separately and individually to each defendant on trial.

You must consider the charges as to each defendant independently and must consider each count of the indictment separately as to the charges made against the particular defendants.

A separate crime or offense is charged against each of the defendants in each count of the indictment. Each offense and the evidence applicable thereto should be considered separately. Your verdicts may be the same, or different, with respect to the various defendants, and as to any defendant, with respect to the different counts.

It is your duty to give separate, personal consideration

to the case of each individual defendant. When you do so, you should analyze what the evidence shows with respect to that individual, leaving out of consideration entirely all evidence admitted solely against some other defendant or defendants.

Now I have here some copies of the indictment. The original indictment will be taken and handed to the foreman and taken into the jury room. But it is a long document, and so that you may understand it better I have enough copies here to be given one to each two jurors, if you will distribute them that way, and then I will try to show you the different sections of it and to explain the different sections of the indictment to you so that you will be able to follow it.

Now, I suggest that Mr. Menzies and the alternate take them, and then the next two and three, three and four, and there will be just one odd that way. Mrs. Zeilinski, give No. 6 one, too, please. Now, the last lady, No. 12, needs one. It doesn't matter so long as there is one for every two.

I suggest that you not read it now. I will come to it in just a moment.

There are eight counts in the indictment. A count is a separate charge. You will have to bring a separate verdict as to each defendant on each count.

The first count, which begins on the first page of the indictment charges a conspiracy. Now, before you read it, let me go on.

The remaining seven counts are what we call substantive counts. I will instruct you with respect to the conspiracy count first and later on I will instruct you as to the substantive counts.

First, generally, what a conspiracy is. A conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose, or to accomplish a

lawful purpose by unlawful means. Thus a conspiracy is a kind of "partnership in criminal purposes" in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to violate or disregard the law.

Mere similarity of conduct among various persons and the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be achieved. What the evidence must show, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy, but merely happens to act in a way which furthers an object or purpose of the conspiracy, does not thereby become a conspirator.

Before a jury may find that a defendant, or any other person, has become a member of a conspiracy, the evidence must show that the conspiracy was formed, and that the defendant, or other person who is claimed to have been a member, knowingly and willfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

To participate knowingly and willfully means to participate voluntarily and understandingly, and with specific intent to do some act the law forbids, or with specific intent

to fail to do some act the law requires to be done; that is to say, to participate with bad purpose either to disobey or to disregard the law. So if a defendant, or any other person, with understanding of the unlawful character of a plan, intentionally encourages, advises or assists, for the purpose of furthering the understanding or scheme, he thereby becomes a knowing and willful participant—in other words, a conspirator.

One who knowingly and willfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the instigators of the conspiracy.

In determing whether or not a defendant, or any other person, was a member of a conspiracy, the jury are not to consider what others may have said or done out of his presence. That is to say, the membership of a defendant, or any other person, in a conspiracy must be established by evidence as to his own conduct, what he himself said and did, or what was said and done in his presence.

If and when it should appear from the evidence that a conspiracy existed, and that a defendant was one of the members, then the acts thereafter knowingly done, and the statements thereafter knowingly made, by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the acts and statements may have occurred in the absence and without the knowledge of the defendant, provided such acts and statements were knowingly done and made during the continuance of such conspiracy and in furtherance of an object or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made outside of court by one person may not be considered as evidence against any person who was not present and heard the statement made.

In your consideration of the evidence as to the offense of conspiracy charged, you should first determine whether or

not the conspiracy existed as alleged in the indictment. If you conclude that such conspiracy did exist, you should next determine separately as to each defendant whether or not each defendant knowingly and willfully became a member of the conspiracy.

If it appears from the evidence beyond a reasonable doubt that a conspiracy was knowingly and willfully formed as alleged in the indictment; and that the accused knowingly and willfully became a member of the conspiracy at the inception of the plan or scheme or afterwards; and that thereafter one or more of the conspirators knowingly committed in furtherance of an object or purpose of the conspiracy, one or more of the overt acts charged; then the success or failure of the conspiracy to accomplish the common object or purpose is immaterial.

By the term "overt act" is meant any act committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street, or driving an automobile, or using a telephone. It must, however, be an act which follows and tends toward accomplishment of the plan or scheme, and must be knowingly done in furtherance of some object or purpose for the conspiracy charged in the indictment.

There does not seem to be any dispute that one or more of the overt acts charged was done in the State of Maryland. The dispute is whether or not a conspiracy existed and, if so, who were the conspirators.

Now you may pick this up and in just a minute I will start leading you to the various paragraphs.

The first count charges all four defendants in this case with conspiracy to defraud the United States of its governmental rights, namely, the impartial and honest operation of the Department of Justice free from corrup-

tion, improper and undue influence—you need not read that. I will take it paragraph by paragraph in a moment. I noticed a number of you were reading, and this, first, is simply a summary of it, and then I will show you how it appears in there.

The first count charges all four defendants in this case with conspiracy to defraud the United States of its governmental rights, namely, the impartial and honest operation of the Department of Justice free from corruption, improper and undue influence, fraud, and unlawful impairment and obstruction as a result of the activities of the defendants Johnson and Boykin before that Department, and in depriving the United States of the faithful, loyal and conscientious services of Johnson and Boykin, as Congressmen in violation of section 371, Title 18, of the United States Code. The language of this statute forbids an illegal agreement to defraud the United States in any manner or for any purpose. It has been legally decided by the courts, and I so instruct you, that the phrase "defraud the United States in any manner or for any purpose" is not limited merely to conspiracies to deprive the United States of money or property or other things of pecuniary value. It also comprehends the right of the government not to be defrauded of the unbiased, independent, faithful, loyal services of its employees, including Congressmen, and that its legitimate official action shall not be defeated by misrepresentation, chicanery, overreaching, trickery, or by means that are dishonest.

Now, before I start reading the indictment, and after I finish I am going to repeat it, I instruct you that in determining whether there was a conspiracy, that is to say, whether the defendants conspired to defraud the United States, the jury must do so upon the basis of the testimony and exhibits and not from the averments of the indictment. The indictment is just a charge that is made against the defendants. Now, with that understanding, we come to this:

The first count, the conspiracy count, covers the first seventeen pages of the indictment. The first count, the

conspiracy count begins by identifying the defendants and their alleged co-conspirators. Now, introducing the defendants and saying who they are occupies something like the first twelve paragraphs. It just says who the defendants are, and is not evidence in the case. You have heard who the people are from the evidence.

Now, paragraph 13 alleges and refers to the indictment against Edlin and the First Colony Savings and Loan Association, which was pending in the District of Maryland in 1960 and 1961.

Now, then we come to paragraph 14. The indictment charges in paragraph 14, which, as you will see, begins on page 3 and runs down through the middle of page 5. It has an introductory paragraph and then four separate subparagraphs.

Paragraph 14 charges that from on or about April 1, 1960, and continuously thereafter until on or about December 31, 1961, the defendants and their co-conspirators conspired in Maryland and elsewhere to defraud the United States of and concerning its governmental functions and rights described in these four subparagraphs (a), (b), (c) and (d) in summary, as follows:

Paragraph (a), its right to have the business of the Department of Justice conducted free from improper and undue influence.

Paragraph (b), its right to have the personnel of that Department free to transact its official business unhindered by the exertion upon them of corrupt, unlawful, improper and undue pressure and influence.

Paragraph (c), its right to have the duties of Johnson and Boykin in their official capacities as Members of the House to be performed free from corruption resulting from their personal and pecuniary interest in the success of Edlin, et al, in attempting to persuade the Department of Justice to cause the postponement of the trial and the eventual dismissal of the indictment against Edlin, et al.

And in paragraph (d), its right not to be deprived of the faithful services of Johnson and Boykin in their official capacities as Members of the House uninfluenced by corruption and by payments of money and other valuable considerations to them by the other defendants and co-conspirators as compensation for services rendered and to be rendered by Johnson in behalf of the other defendants and co-conspirators in relation to matters pending in the House and for services rendered and to be rendered by Johnson and Boykin before the Department of Justice in relation to proceedings, charges and accusations in which the United States is a party and directly interested.

Now, that is the definition of the conspiracy. The conspiracy is to defraud the United States—you have heard that said. And these four paragraphs simply state the rights which it is claimed the United States was defrauded of.

It is simply a recitation of rights, because the object and purposes in what is alleged to have been done pursuant to the conspiracy follows and begins at paragraph 15. Now, paragraph 14 simply states what the Government charges the conspiracy was. Paragraph 15 says what things were part of the conspiracy. Paragraph 15 says that it was a part of the conspiracy that Johnson should at the request of Edlin and Robinson render services for compensation to them and their co-conspirators, namely the making of a speech on the floor of the House defending the operations of the Maryland Independent Savings and Loan Associations, the stability and solvency thereof and reliability and integrity of commercial insurance on investments made by said independent savings and loan associations, on the Floor of the House of Representatives.

Paragraph 16 alleges that it was part of the conspiracy that Johnson, Edlin and Robinson would cause to be reprinted 50,000 copies of said speech for distribution to prospective depositors in the aforesaid savings and loan associations, to members of the General Assembly of Maryland and to others.

A[illegible]ragraph 17 to 25 which begin on page 5, I think, and run to page 8, allege that it was part of the conspiracy that Johnson and Boykin should at the request of the other defendants and their co-conspirators render specified services for compensation in relation to the aforesaid indictment, bringing the prestige, weight and influence of their official position to bear upon the officials of the Department of Justice to obtain decisions and actions beneficial to the defendants and their co-conspirators, particularly the postponement of the trial and the eventual dismissal of the indictment.

Now, the rest of that first count, from page 8 through page 17, alleges 75 overt acts alleged to have been committed or done in furtherance of the conspiracy.

Now, as I have told you, that, although it is only required that one overt act be done in the State of Maryland, there has been no dispute in the case—I come back to what I said a moment ago—there does not seem to be any dispute that one or more of the overt acts charged was done in the District of Maryland. The dispute is whether or not the conspiracy charged in the indictment existed and if so, who were the conspirators?

Now, let me come back and say again that I instruct you that, in determining whether there was a conspiracy, that is to say, whether the defendants conspired to defraud the United States, the jury must do so upon the basis of the testimony and exhibits and not from the averments of the indictment.

Count No. 1 of the indictment charges the defendants of conspiring together to defraud the United States, as I have said. In order to find the defendant or defendants, or any of them guilty of participating in such conspiracy, you must find beyond a reasonable doubt that they used misrepresentation, concealment, overreaching, trickery, or inherently dishonest means to interfere with lawful governmental functions. To find them guilty you must find that they knowingly joined in an unlawful agreement or had a

mutual tacit understanding to defraud the United States before you can find them to be guilty of a violation of the statute on which the First Count is based. Even if you find that any of the defendants committed one or more of many alleged overt acts, they did not violate the statute unless they knowingly joined in such an agreement or in such a mutual tacit understanding.

You may find from the evidence that the Government has proved all of the elements necessary to show the single conspiracy charged in the indictment and one or more overt acts in support thereof done in the State of Maryland. In that event you will convict any or all of the defendants whom you find adhered to that conspiracy. You may find from the evidence that the Government has failed to prove that any conspiracy to defraud the United States was entered into by any of the defendants in which event you will acquit all of the defendants on Count 1.

This next point applies particularly to the Defendant Boykin. You may, on the other hand, find that the Government has proved, instead of one conspiracy, two separate conspiracies, the first beginning on April 1, 1960, to defraud the United States of its governmental functions largely by the making of a speech by defendant Johnson and distribution of reprints thereof; the second, beginning in 1961, to defraud the United States of its governmental functions by unlawfully interceding with the Department of Justice to procure the dismissal or postponement of the prosecution then pending in this Court in Criminal No. 25038. If you find that the Government has proved two conspiracies rather than one, then you are instructed that there is no evidence before you from which you can find that defendant Boykin participated in the first of the conspiracies, and you cannot find him guilty under the first count unless you find that the Government has proved beyond a reasonable doubt that in 1961 Boykin participated in a conspiracy to defraud the United States of its governmental functions by interceding with the Department of Justice to procure the dismissal or postponement of the

prosecution then pending in this Court in Criminal No. 25038 which is the number of the case that you have been hearing about.

The indictment charges: "It was a part of the conspiracy that the defendants Edlin and Robinson would pay the defendant Boykin and Tensaw Land and Timber Company the sum of $250,000 and would offer and promise to the defendant Boykin and Tensaw Land and Timber Company compensation and other valuable considerations as an inducement for the defendant Boykin to use his influence as a member of the House of Representatives in attempting to secure the postponement of the trial of the charges contained in the indictment hereinbefore described in paragraph 13, and the eventual dismissal of said indictment."

Boykin does not deny that two checks totalling $250,000 payable to the Tensaw Land and Timber Company were delivered to him, but he takes the position that they were made as part of arms' length transactions in connection with real estate, about which you have heard evidence. You have heard a great deal of testimony about the nature of those transactions and the value of the properties. The exact value of the properties is not important. The value of the properties is important in this case as hearing on the questions whether the payments to Boykin were part of an arm's-length transaction or were intended to be and were received as an inducement to Boykin to use his influence as a member of the House of Representatives in attempting to secure the postponement of the trial of the charges contained in the indictment pending in this Court in Criminal No. 25038 and the eventual dismissal of said indictment, as charged in paragraph 24 that I have read to you. That is the issue on which the question of value is important.

A person who, without knowledge of the existence of a conspiracy, happens to act in a way which furthers an object or purpose of the conspiracy does not thereby become a conspirator. Therefore, even if you find from the

evidence that a conspiracy was formed on or about April 1, 1960, for the purpose of promoting the interests of Defendant Edlin or his two savings and loan associations, and even if you further find that defendant Boykin acted in 1961 in a way to promote the interests of defendant Edlin or his savings and loan associations, you will not return a verdict of guilty against Boykin on count one of the indictment, unless you can find beyond a reasonable doubt that, when he so acted in 1961, he knew of the existing conspiracy and its purpose and knowingly and wilfully entered into it to further any of its objectives.

To summarize, in order to establish the offense of conspiracy charged in the indictment, the evidence must show beyond a reasonable doubt:

First: That the conspiracy described was formed and existing at or about the time alleged;

Second: That the accused knowingly and wilfully became a member of the conspiracy at some time during its existence;

Third: That one of the conspirators thereafter knowingly committed in the District of Maryland at least one of the overt acts charged in the indictment, at or about the time and place alleged; and

Fourth: That the overt act was committed in furtherance of some object or purpose of the conspiracy as charged.

If you find from the evidence beyond a reasonable doubt that the existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy one of the overt acts alleged was knowingly done in the District of Maryland by one of the conspirators in furtherance of some object or purpose of the conspiracy as charged, proof of the conspiracy offense charged is then complete; and it is complete as to every person found by you to have been knowingly and wilfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

Now, Members of the Jury, that is the First Count and it is considerably more than half of what I am going to read to you. I suggest that you take, if you would like, one minute for members of the jury to stand up and stretch if you like, and let me take a drink of water and then we will go on to the second half of the charge. You need not leave the room unless you want to.

(A brief recess was taken.)

(The Court) And here again this is a summary. Now, Count 2 of the indictment begins on page 18. Counts 2 through 8 of the indictment charge that Congressman Johnson, aided, abetted, counseled and induced by Congressman Boykin and by Edlin and Robinson received a specific check, a different check in each count, for services rendered and to be rendered by Johnson before the Department of Justice in a proceeding, charge and accusation in which the United States was a party and directly interested, namely, an indictment returned on November 17, 1959, in the United States District Court for the District of Maryland against Edlin, First Colony Savings and Loan Association and others, for alleged mail fraud, such services consisting interceding and conferring with officials of the Department of Justice, presenting assertions, arguments and allegations, and using the official position, weight and influence of Johnson's office as Congressman, to influence and persuade these officials to recommend and obtain the postponement of the trial of the charges contained in the said indictment and the eventual dismissal of that indictment. These charges are based upon Section 281 of Title 18, United States Code as it existed at the time of the return of the indictment in this case and now exists in another Section of the Code.

That law. so far as applicable here, is as follows: "Whoever, being a member of or delegate to Congress"—and this is the statute in which the violation is charged and this is, of course, a part of the conspiracy which we have here.

"Whoever, being a member of or delegate to Con-

gress or Resident Commissioner, either before or after he has qualified . . . directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer or any civil, military or naval commission," shall be guilty of an offense against the United States."

Now, that is the essential part of the statute.

Now, if you will turn to the substantive counts on page 18. You need not read them. This is just so you get the feel of it when you look at it in the jury room.

The second count charges that on or about April 3, 1961, in the District of Maryland, Johnson, being then a Member of Congress, acting jointly and in concert with and aided and abetted by the other defendants, unlawfully, wilfully and corruptly received, directly or indirectly from Edlin and Robinson compensation in the amount of $800, to-wit, the proceeds of a bank check drawn by Robinson on a certain bank in Miami, Florida, which was "deposited in, credited to and final payment in the sum of $800 made thereon to the account of" Johnson at the Exchange and Savings Bank, Berlin, Maryland, the date and place of the receipt of said check by Johnson being to the Grand Jurors unknown, for services rendered and to be rendered by Johnson before the Department of Justice in relation to the proceeding, charge or accusation referred to in the first count. Reference is made to 18 U.S.C.A. Sections 281 and 282. Section 281 is the section I just told you about and I will tell you about 2 in a moment.

Now, then, the second count which charges substantially what I have told you is on pages 18 and 19. And then the third count is on pages 20 and 21. They are all about two pages long, and they are all very similar except as to the

amount of the check and the date of the check and whose check it was and where the check was paid.

The third, fourth, fifth and sixth counts are similar to the second count except for dates and amounts and the allegation that the checks referred to in those four counts were drawn by one of the alleged co-conspirators, that is, one of the building and loan associations, on the National Bank of Bethesda-Chevy Chase, Bethesda, Maryland.

The 7th and 8th counts are similar to the second count, that is, it was one of Robinson's checks, except for dates and amounts of the checks.

Let me repeat what I have said again, that to prove these counts you must consider the evidence and not what is alleged in the indictment.

I am not reading this indictment to you as any indication that I think it has been or has not been proved one way or the other but this is so you will understand the charge. You will decide whether it has been proved from the evidence.

You will note that the charge is that Johnson violated this statute and that the other defendants aided and abetted him in its violation. The defendant Boykin is not charged with a direct violation of this statute, only with aiding and abetting Johnson. Edlin and Robinson are also charged as aiders and abettors.

Now, I will talk to you about the aiders and abettors and give you instructions which apply to Boykin, Edlin and Robinson and that part of it in a few minutes.

First I want to talk to you about Johnson, the test which you shall apply in determining whether or not Johnson violated this particular statute. In order to find any of the defendants guilty under any of the 7 counts, you must find with respect to such count four elements, which I will discuss separately:

First, that the defendant Johnson was a Member of Congress at the time he is alleged to have performed the

services referred to in that count. The defendants do not dispute that Johnson was a Member of Congress during the times mentioned in each of the counts 2 through 8.

Second, you must find that there was before the Department of Justice, the proceeding, charge and accusation referred to in each of the counts and that the government was a party or directly interested in that proceeding, charge or accusation. A sentence is left out of the copy, as a result of what I have ruled as a matter of law. There is no serious question for the jury to decide that there was a charge and accusation pending before the Department. I have, in effect, ruled that under the evidence which is not disputed in the case, as a matter of law, I have taken the responsibility of making that decision. I think that is the intention of all counsel.

Now, that brings us to the two points as to which there is a real dispute to be decided by you with respect to all of the defendants including Johnson in this first count.

The third element which you must find, you must find that the Defendant Johnson rendered services before the Department of Justice within the meaning of that term as it is used in the statute with respect to which I will give you further instructions.

Fourth, you must find that Johnson received compensation for those services. I will instruct you as to the meaning of the word "compensation" as it is used in the statute.

You must also find that the compensation was received in the District of Maryland, but with respect to whether the compensation was received in the District of Maryland, that is, whether those checks were received in the District of Maryland, I instruct you that, in view of certain rulings of law which the Court has made, the only question for you to decide on this issue is whether the several checks were deposited in the State of Maryland. I do not understand that any of the defendants dispute the fact that the checks

were deposited in a Maryland bank, and I have taken the responsibility of making certain rulings which washed out the question of where the collection was made.

A Congressman—I am coming in just a moment to time and services and will define compensation, but first I want to give you just a general word. A Congressman, whether he is a lawyer or not, may talk to the officials of the Department of Justice and urge them to drop a charge against a constituent or some other person without violating Section 281, the section upon which counts 2 to 8 are founded, so long as he does not receive compensation for so doing. Section 281 is violated only when the services are rendered for compensation.

So, the question is, did Congressman Johnson render any such services for compensation?

The term "services" as used in the statute and indictment is broad enough to embrace any conscious and wilful effort and act to aid, assist and promote the interest of the party before a governmental department or agency.

However, over the years an exception has grown up and been legally recognized, namely, that a Congressman who is a lawyer may represent a defendant in the trial of a criminal case, even though he receives compensation for his services.

I instruct you that this exception applies in the following circumstances and subject to the following conditions, so far as the issues in this case are concerned.

What I am now telling you is the law of the case. This is in some respects a novel proposition and I am instructing you on the law for the purposes of this case you are bound to accept what I say to you is the law on this subject. But it is for you absolutely without any intimation or suggestion from me to find and determine what the facts are.

I instruct you that this exception applies in the following circumstances and subject to the following conditions, so far as the issues in this case are concerned.

A Congressman who has been employed as a lawyer to represent a defendant in a criminal case may do anything necessary and proper to be done in the conduct of the defense of the criminal case. He may confer with the United States Attorney or the officials of the Department of Justice, so long as he discloses to the Department of Justice the fact that he is appearing as an attorney for one or more of the defendants in the criminal case, and not in his capacity as a Congressman and secondly, so long as he does not attempt to bring his influence as a Congressman to bear on the Department of Justice to secure a dismissal or postponement of the case. Such disclosure, as I mentioned is the first requirement of the exception. It may be made by formally entering his appearance in a criminal case. It is not disputed that Johnson did not enter his appearance in that case, or these disclosures may be made by telling the officials of the Department of Justice that he is visiting them as an attorney for one or more of the defendants in the criminal case, and not as a disinterested Congressman.

The purpose of the statute is plain. It was aimed to prevent Congressmen, officers and employees of the United States Government from using the weight of their positions or their influence in connection with matters which were to be determined before any department, agency, court martial, officer or commission, and was to assist in insuring the integrity of such departmental determination. The statute is designed to insure undivided loyalty on the part of the government officials to the interest of the United States. The statute prohibits those holding governmental positions from using the prestige and influence of their official status for the benefit of private parties for compensation.

If you find from the evidence that Johnson was appearing before the Department of Justice as an attorney for Edlin or First Colony or both of them in the criminal case then pending against them and disclosed to the officials of the Department of Justice that he was so appearing or visiting them rather than as a Congressman with no personal or

pecuniary interest in the matter, then, in that event, it would not be a violation of section 281 for Johnson to have requested a review of the indictment by the Department nor to offer Edlin's testimony against Hoffa in exchange for a dismissal of the indictment against Edlin and First Colony, so long as he did not attempt to bring the influence of his office as a Congressman to bear on the officials of the Department to secure a dismissal of the indictment or postponement of the case.

But if you find that Johnson did bring, or attempted to bring his influence as a Congressman to bear on the Department of Justice in an effort to secure a dismissal or postponement of the criminal case against Edlin and First Colony, and if you further find that he received compensation for so doing, then such action would constitute a violation of Section 281.

The fourth element to which I referred—I said there were two in dispute, the third and fourth. There is a dispute before you and there is a legal dispute before me. The fourth element to which I referred a few minutes ago which the Government must prove is that Johnson received compensation for the services which he rendered. It is only when the services referred to in Section 281 are rendered for compensation that there is a violation of Section 281. I have just instructed you with respect to the meaning of the term "services," as used in Section 281, and the extent of the exception which is allowed to a lawyer with respect thereto. If you find—that is a lawyer who is a Congressman—where he is not a Congressman and is not employed by the Government, of course it is not involved.

If you find that Johnson rendered such services before the Department and that the services do not come within the exception, then you must consider whether Johnson received compensation for those services, directly or indirectly.

The several counts 2 to 8, inclusive, charge the receipt

of specific checks, and in ruling on counts 2 through 8 you should consider each check separately.

With respect to each check, you must consider whether each such check was given in whole or in substantial part for services rendered by Johnson before the Department of Justice, within the meaning of Section 281 as I have construed that section to you. "Substantial part" does not mean any particular percentage of the check, but a significant part as distinguished from an insignificant or inconsequential part. The question is whether services rendered by Johnson, not covered by the exception which I have described to you, constituted a substantial part of the consideration for which each such check was issued.

Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your duty to base a verdict upon any view of the law other than that which I give you in this charge in this case at this time, whether you think the law should be more strict or less strict. The statute being the law of the United States it is to be enforced like any other law of the nation.

It is not improper for a member of Congress to carry on private business for profit during his term in office so long as he does not violate any criminal statute. Nor is it improper for a member of Congress who is a lawyer to practice his profession for gain during his term of office so long as he does not violate any statute.

There is evidence in this case from which you may find that, while a member of Congress, Johnson, as an attorney, rendered legal services from September, 1960, until May, 1961, on behalf of First Continental Savings and Loan Association and First Colony Savings and Loan Association and other corporations, and from May, 1961 until October, 1961, on behalf of Charles County Land Company and Leisure City Land Company in connection with legal matters unrelated to visits to the Department of Justice, it was not a violation of federal law for Johnson, as an attorney,

to render such legal services for compensation although he was at the time a member of Congress.

If you find that the check referred to in Count 2 was received by Johnson as compensation for bona fide legal services rendered by him to the savings and loan associations and later to the land companies, and not in whole or in substantial part for services rendered by Johnson before the Department of Justice, then you should find Johnson not guilty on the second count. The same instruction applies with respect to each of counts 3 to 8, as well as to count 2, even though the jury may consider the payments to Johnson to have been large, or even excessive, for the legal work which he did, but in considering whether or not they were for bona fide legal services, the fair value of such services may be considered.

If the jury find that Johnson did not knowingly receive the check of Robinson dated March 31, 1961 in the sum of $800, or any substantial part thereof, as compensation for services rendered or to be rendered before the Department of Justice, the jury must return a verdict as to him of not guilty on the second count.

The same rule applies to each of counts 3 through 8.

On the other hand, if you find that all or a substantial part of the $800 check referred to in the second count was knowingly received by Johnson as compensation for services rendered or to be rendered before the Department of Justice, and either (1) that Johnson did not disclose to the Department that he was appearing as attorney for one or more of the defendants in the pending criminal case and not in his capacity as a Congressman, I think I will say "disinterested Congressman" there because I think that was the correction that was made up above, and (2) that Johnson brought to bear his influence as a Congressman on the officials of the Department of Justice in an effort to secure a dismissal of the criminal case, then you should find the defendant Johnson guilty.

To constitute the offense in question, it would not be necessary that Johnson both fail to disclose his appearance as attorney and also use his influence as a Congressman; either would be sufficient.

The same rule applies as to each of counts 3 through 8.

Now, I think this is the point to clear up something that took us sometime while you were out. The defendants contend that Mr. Tydings, in his argument to you this morning stated the rule of law substantially differently from the way I have given it to you. Mr. Tydings takes the position that he did not state it substantially differently from the way I did. He did use somewhat different language, and it is for the jury to recall what, if anything, he said.

However, what I want to say to you is that if Mr. Tydings did misstate or state in any different way from the way that I have stated it as to which I do not intimate or express any opinion, then I instruct you, if Mr. Tydings said anything different from what I said, you should disregard what Mr. Tydings said and follow the instructions of law that I have given you.

We come now down to the aiders and abettors and this is the last major section of the charge.

In a case where two or more persons are charged with the commission of a crime, the guilt of the accused may be established without proof that all the defendants did every act constituting the offense.

The applicable statute provides: "Whoever commits an offense against the United States, or wilfully aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

In order to aid and abet another to commit a crime it is necessary that a defendant wilfully associate himself in some way with the criminal venture; and that he wilfully participates in it as in something he wishes to bring about; and that he wilfully seeks by some action of his to make it succeed.

As to each of the counts numbered two through eight, unless the Government has proved beyond a reasonable doubt that defendant Johnson received compensation as charged in the said count for services rendered and to be rendered before the Department of Justice, all defendants must be acquitted on said counts.

If Defendant Boykin believed in good faith two things: (1) that defendant Johnson was appearing at the Department of Justice as counsel for any person indicted in criminal case No. 25038 for a lawful purpose—that is to do what a lawyer might reasonably do in the defense of a criminal case and not to bring his Congressional influence to bear on the Department of Justice to secure favorable decisions from the Department in connection with a possible dismissal of the case—and (2) further believed that this fact was known to officials of the Department of Justice, then if you so find, Boykin cannot be held to have aided and abetted Johnson in the crimes charged in counts 2 through 8 of the indictment.

The same rule applies to Edlin and to Robinson.

In other words, even if the Government has proved beyond a reasonable doubt that defendant Johnson, in connection with the services alleged in counts 2 through 8, acted in a capacity other than as counsel for a party indicted in Criminal Case 25038, or failed to disclose to the Department of Justice that he was acting as counsel for such a party, defendant Boykin may not be convicted on any of said counts, if, through a reasonable mistake of fact, he believed in good faith, that Johnson was acting as counsel for one or more of the parties in Criminal Case No. 25038, and that the Department was aware that Johnson was acting in such capacity and that Johnson was not attempting to bring his Congressional influence to bear on the Department of Justice to secure a favorable action in the criminal case.

The same rule applies to Edlin and Robinson.

Belief is a state of mind and is to be determined as any other fact. With respect to the defendants Boykin, Edlin

and Robinson, you may further consider whether or not there existed a reasonable, even if mistaken, basis for such belief.

Even if you find beyond a reasonable doubt that defendant Johnson received compensation as charged in counts 2 through 8 for the services therein alleged and that defendant Boykin knew of the receipt of the payments in question, defendant Boykin is innocent of the crimes charged in the said counts if he believed, in good faith, the said payments to be compensation for services other than those alleged in the said counts.

The principles announced in this instruction also apply to Edlin and Robinsou.

You must bring a separate verdict with respect to each defendant on each of the 8 counts. The verdict must represent the considered judgment of each juror. Your verdict must be unanimous with respect to a particular defendant on a particular count.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans. You are judges—judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is unbecoming for a juror upon entering the jury room to voice an emphatic expression of his opinion on the case or

to announce his determination to stand for a certain verdict and nothing else. When one does that at the outset, his sense of pride may cause him to hesitate to recede from an announced position even though he may afterwards be convinced that it is erroneous.

I give that charge because it is in the book to be given. Our jurors do not behave that way and I always feel a little bit embarrassed in making any implication of that nature.

Remember that you are not partisans or advocates in this matter but you are judges. The accused and the public expect that you will carefully and impartially consider all the evidence, follow the law as stated by the court and reach just verdict as to each defendant.

Let me remind you again that nothing I have said to you is intended to intimate any opinion as to what your verdicts should be.

As I have told you, you must bring in a separate verdict with respect to each defendant on each of the eight counts.

A separate crime is charged against each of the defendants in each count of the indictment. On any particular count your verdicts may be the same or different with respect to the several defendants. And, as to any particular defendant, your verdicts may be the same or different on the several counts.

With respect to counts 2 to 8, you cannot find any of the defendants guilty on any of those counts unless you have first found the defendant Johnson guilty on that count. That is because the other defendants are charged as having aided and abetted Johnson in the commission of the offenses charged.

If you find the defendant Johnson guilty on one of the substantive counts, you may find some or all of the other defendants also guilty under that count, or you may find some or all of the other defendants not guilty under such counts.

If these instructions are not clear to you, I will be glad to try to clear up anything that you do not understand.

If it becomes necessary, during your deliberations to communicate with the Court, you may send a note by the bailiff. Never attempt to communicate with the Court except in writing. And, bear in mind always that you are not to reveal to the Court or to any person how the jury stands, numerically or otherwise, on the question of the guilt or innocence of any defendant, until after you have reached an unanimous verdict.

Now, members of the jury, if 50 minutes will be enough lunch for you, I suggest that you go out and come back to this room at 2:30. You will find the room packed and jammed, not with people who have been here before, all of whom must be asked to leave except the lawyers who are here in the case because this room will be filled with the people who are seeking naturalization. We have a naturalization ceremony which will start here at 2:30 and you will come in and sit here, and you will do this just before the naturalization ceremony. After the naturalization people come in, the public is not excluded but the people who are to be naturalized have the first right to come into the room, and until the naturalization group has completed, I will ask the people who are coming here, to come back at 2:30 to wait until the naturalization people have come in.

There will be some seats left, I am sure, plenty, of course. for counsel and all the members of the family—there will be plenty of room for everyone. But the public generally will have to give first place to the naturalization.

You are excused until half past two. Leave the copies of the indictment. You are not to discuss this with anyone, even among yourselves.

(The trial was recessed at 1:40 p.m. until 2:30 p.m.).

[Tr. 6307-6335]:

EXCEPTIONS TO CHARGE

In Chambers 2:15 p.m.

(The Court) All right, Mr. Doub.

(Mr. Doub) This is a very difficult charge to except to, Your Honor.

I wish to except to the failure of Your Honor to grant Mr. Johnson's request under the heading "General" with respect to circumstantial evidence."

(The Court) Denied on the grounds of Holland vs. United States.

(Mr. Doub) And I except to the failure of Your Honor to grant our instruction—

(The Court) I will grant the instruction in Judge Matthes' Instruction on Circumstantial Evidence which I understand you do not want.

(Mr. Doub) Do you have it there, Your Honor? Because I have not rejected it at all.

(The Court) Off the record.

(Discussion was off the record.)

(The Court) Go ahead and try the next one.

(Mr. Doub) I except to Your Honor's failure to instruct as to our request on the substantive Counts 1, 2, 3, 4, 5, 6, 7, and 11.

(The Court) I do not understand. To instruct what?

(Mr. Doub) I am in effect, renewing—

(The Court) Are you renewing all your prayers? Let me see which ones they are.

Off the record.

(The Court) Which ones, Mr. Doub?

Circumstantial evidence I am denying.

(Mr. Doub) Under "Substantive Counts." I believe there should be the instructions in conformity with our request as to 1, 2, 3 and so on, relating to each count.

(The Court) I did give them to you.

(Mr. Doub) Is that in General Terms?

(The Court) I gave them to you as to the second count and then stated the same thing applies to each of the other counts and then I understood you had told me last Thursday, or last Friday that it was satisfactory if I did that. I did exactly what you said, or tried to.

(Mr. Doub) I will withdraw that, Your Honor, if that is embodied there.

I renew and except to Your Honor's failure to include under the substantive counts our request No. 11.

(The Court) It is the sham and pretense. I deny it. There was no charge of sham and pretense as such and it was not argued that it was sham and pretense by the Government in its closing arguments.

(Mr. Doub) They made the point in the opening statement and I think there is a reasonable inference that that was argued, Your Honor.

(Mr. Tydings) Your Honor, my recollection is that it was agreed by Mr. Doub and if I did not argue it in the final argument that there would not be any issue raised on the point.

(Mr. Doub) I do not believe that.

(Mr. Tydings) Mr. Robinson read it.

(Mr. Williams) What is that?

(Mr. Tydings) His prayer that he is requesting now. That sham and pretense business.

(The Court) I deny it, because there is no requirement of the Government to prove sham and pretense and John-

son is not entitled to a verdict of not guilty by virtue of the failure of the Government to prove sham and pretense because he can be found guilty on some evidence in the case.

All right. Denied.

(Mr. Doub) I would like to renew instruction No. 12 under the substantive counts, Your Honor.

(The Court) I think I gave the substance of it because I said that if the check was received for this, and now I do not know where I can find it. It seems to me that I had given the substance of it and it is a question of whether he received compensation for the services and whether these checks amounted to compensation in whole or in part.

I tell you, if you find that the check—in Count 2—the check received in Count 2 was received by Johnson as compensation for bona fide legal services rendered by him to the savings and loan associations and later the land companies and not in whole or substantial part for services rendered by Johnson before the Department of Justice, then you should find Johnson not guilty on the second count.

"The same instruction applies with respect to each of counts 3 to 8, as well as to Count 2, even though the jury may consider the payments to Johnson to have been large, or even excessive, for the legal work which he did, but in considering whether or not they were for bona fide legal services, the fair value of such services may be considered."

(Mr. Doub) I would like to still press No. 12.

(The Court) Denied unless the Government concedes it.

(Mr. Tydings) No.

(Mr. Doub) Then I would like to renew request No. 14 on the "Substantive Counts" which I conceded, however, at a prior hearing that I had no authority for it.

(The Court) Denied.

(Mr. Doub) In order to maintain the motions I made to dismiss the first count of the indictment, Your Honor, on the ground that there were the objectives as stated in the Count which were too vague and improper, I would like to except to Your Honor's instruction on page 14 of the charge where you stated that, it was paragraph 15 and not paragraph 14—which contains the purposes and objectives of the conspiracy.

(The Court) I charged almost verbatim I think in the language of my opinion.

(Mr. Doub) Yes, you did.

(The Court) I will deny the motion because I adhere to my ruling, obviously, on the motion.

(Mr. Doub) It merely is a formal point.

On page 24 you instructed the jury that, if they found there were two conspiracies, Mr. Boykin should be acquitted. I except to that on the ground that, instead the charges should have been—

(Mr. Williams) He did not say that. I wish he had said that. I have been trying to get the Judge to say that.

(The Court) What Mr. Boykin wanted me to say, yes. The Government considered whether it would concede it or not and decided they would not concede it and I said I would rule in favor of the Government unless the Government conceded it.

(Mr. Tydings) And we do not concede.

(Mr. Doub) Well, in any event, I am submitting that you should charge that if the jury finds there were two conspiracies and not one, then all defendants should be acquitted.

(The Court) Denied.

If each defendant wishes to adopt that.

(Mr. Robinson) I wish to join in that.

(Mr. Genn) Right at this point, Your Honor, I want to adopt that point of Mr. Doub's and also the previous one with reference to the paragraphs 14 and 15 and those that follow.

(The Court) And so would you, Mr. Robinson.

(Mr. Robinson) The same for Mr. Robinson.

(The Court) All right. Denied as to all three.

(Mr. Genn) I would like to add also that I think—

(The Court) On the same point?

(Mr. Genn) On the same point, I think also that the granting of this in the circumstances is prejudicial to the other defendants because it suggests or seems to suggest the possibility of a true conspiracy as a ground why the Court should dismiss it.

(The Court) Denied.

(Mr. Ungar) Your Honor, for the record on behalf of the defendant Boykin we also adhere to Mr. Doub's exception as to the relation between paragraphs fourteen and fifteen of the indictment and as to the duplicity point we want to state our exception more specifically when it comes to us.

(The Court) Naturally, because you have a different point.

(Mr. Doub) On page 34 of the charge, Your Honor, I wish to except to the last paragraph explaining the term "services" as used in the statute and indictment on the ground that the definition is too broad.

(The Court) Well, tell me how it should be.

(Mr. Doub) In scope. I read it "Services broad enough to embrace any conscious or wilful effort to promote the interests before a governmental department or agency."

(The Court) I had a much longer charge on services and that is the correction I made at the last minute, was to cut down the lengthy one which would have been more damaging to you than this on the theory that it did not really make any difference and that it was the exception that counted. If you will rewrite this and, while the other people are giving their exceptions, and can say it any better, I will be glad to give it. Because I immediately say the exception, that every other instruction deals with what is covered by the exception.

(Mr. Doub) I will give it some thought, Your Honor. I am sure it is more difficult to do than it is to except to it.

(The Court) All right.

(Mr. Doub) On page 36 I wish to except to the generalized statement that the statute involved in the substantive counts "prohibits those holding Governmental positions from using the prestige and influence of their official status for the benefit of private parties."

(The Court) I added "for compensation." I read it to the jury and added the words "for compensation" and I wrote it in in pencil. I stopped and wrote in "for compensation." I think the other defendants have it.

(Mr. Robinson) I have it written in on mine.

(Mr. Doub) On pages 38 and 42, Your Honor instructed the jury that the Government need only show that a check specified in the substantive counts was given in whole or in substantial part for services rendered by Johnson before the Department of Justice.

I except to that on the ground that under the explicit terms of the indictment, the government will prove that each check in full was received for the alleged services rendered. That was the postion I took.

(The Court) Denied and the Government says—

(Mr. Robinson) I wish to join that and save time.

(Mr. Genn) This defendant joins in that.

(The Court) All defendants may have an exception to that.

The Government has a perfectly useful exception. I did not say "any part" instead of "substantial."

(Mr. Tydings) Yes. Which language, we might add, has been approved by the Supreme Court.

(The Court) Go ahead.

(Mr. Doub) I think that is all I have, Your Honor.

(The Court) Mr. Williams.

(Mr. Williams) Your Honor, we, of course, except to the charge on the conspiracy count in so far as it relates to Mr. Boykin. It is our position as we have stated to you heretofore that in fact there were two conspiracies charged on the first count of the indictment that Mr. Boykin should be acquitted.

We submit request No. 2 Boykin's No 2 covered that. That was denied.

(The Court) And an exception will be noted.

(Mr. Williams) Yes, sir. Also, Your Honor, we, of course, take the position that it was necessary for the Government to have proven that each check alleged in each of the substantive counts must have been for services rendered at the Department of Justice by Mr. Johnson and that the checks were given in whole for that reason.

(The Court) Well, that is substantially the same point that has been made and all defendants have exceptions on that.

(Mr. Williams) Yes, and Your Honor, we would, of course, renew our request for prayers that we have heretofore submitted except for the one that we withdrew which was No. 9. Some of them were substantially covered in the charge. Some of them are duplicates but in so far as any

was not covered by the charge and in so far as any is not duplicated—

(The Court) I want you to call my attention to the particular point that you think I have omitted from the charge and if you have not gotten them handy, let Mr. Edlin go ahead and you can call them to my attention.

(Mr. Williams) I have got them.

Your Honor, our requested instructions with respect to the exceptions differ from the way Your Honor finally ruled on them. So, in so far as our prayers Nos. 4, 5, 6, 7, and 8 relate to the exception to the law as we understand it under the substantive counts, we except to their denial.

(The Court) Exception granted, of course.

(Mr. Williams) Yes.

Also, Your Honor, we except to the denial of our prayers relating to the substantive counts in so far as they deal with compensation because it is our theory, as we have said twice now, that all of the compensation must have been given for the Department of Justice visits and because that was our theory and the Court took a different postion, there was a denial of our requested instruction 12.

(The Court) I think your previous exception covers it.

(Mr. Williams) 12 and 13. And we except to the denial of our instructions on venue. You understand our instructions on venue as we have urged it in motions for dismissal and motion for acquittal under Rule 29 and we contend there is no venue on Mr. Boykin.

(The Court) Exception granted.

(Mr. Doub) I wish to join in that.

(The Court) All defendants may have exceptions to that. If I adhere to those rulings, there is no objection to the way I worded it.

(Mr. Williams) Then, Your Honor, you were going to

give me fifteen, Your Honor, yesterday but the way you were going to give it to me I did not want it.

(The Court) That is right. No, that is denied. Your fifteen is denied. It is denied as requested.

(Mr. Williams) No. 16 was that broad instruction which covered all counts in so far as Defendant Boykin is concerned and we except to the denial of that.

(The Court) I grant you the exception but I think that I have all of the ideas in the charge. Not because I disagree with the principles in your prayer, but I think they were already given.

(Mr. Genn) Your Honor, I would also like to renew the previous motions and objections and instructions that were offered as framed or their substance. You have granted, I think, in part or in substance 1 to 12 of the instructions of the remaining requests except those that I have withdrawn which I think are 10, 26 and 31. I would simply renew the request.

(The Court) No. 10 was withdrawn, my note says.

(Mr. Genn) And 26 was withdrawn, and 31 and I think the rest simply stated this Defendant's theory of this case.

(The Court) Does the Government feel that any of those prayers ought to be granted or anything more ought to be said to avoid the very broad exception which I am allowing Mr. Edlin.

(Mr. Genn) Now, in addition to that I wish to go into just one or two matters. I think on page 21, where you deny the language—

(The Court) Just let me be clear. I think Mr. Boykin is not here but they understood they had the right to be here.

(Mr. Genn) That is correct, Your Honor.

Now, the charges under Section 371 are being defined and the Court spoke on Page 21 of the copy of this charge that we have been given to follow, stating that in defining de-

frauding of the United States it is not limited to merely money and pecuniary value, and then the next sentence goes on to say:

> "It also comprehends the right of the Government not to be defrauded of the unbiased, independent, faithful, loyal services of its employees, including Congressmen, and that its legitimate official action shall not be defeated by misrepresentation, chicanery, overreaching, trickery, or by means that are dishonest."

I think in the context of this case that that is incorrect, because I think a Congressman has a right to be biased but in the form of a conspiracy count, I think that would be an incorrect suggestion and; so for that reason I would except to that portion of it.

(The Court) I think, by the time I put in "misrepresentation, chicanery, overreaching and trickery, or by means that are dishonest," I covered that the way the Supreme Court and other courts have covered it and so, your exception is allowed and your request for modification is denied.

(Mr. Genn) I think with respect to that definition of a number of items, misrepresentations, concealment, overreaching—I think overreaching again just as a form without application to this particular case and I do not know whether the jury would be confused by that as something "inherently dishonest" means.

So, I just except to that, Your Honor.

And then there is one other—or two others. That is with reference to page 28, the paragraph:

> "A person who, without knowledge of the existence of a conspiracy, happens to act in a way which furthers an object"—

In addition to the previous objection which Mr. Doub made, and which I have made in regard to two possible conspiracies, the Court used the phrase "for the purpose of promoting the interests of defendant Edlin or his savings and loan

associations, and even if you further found that the Defendant Boykin acted in 1961 in a way to promote the interests, you will return a verdict of not guilty."

Again I think it does not charge or state the intent to defraud Governmental functions and I think that it is not accurate. It is not the furthering. That is an object but it is not the defrauding of a governmental function.

(The Court) I think Mr. Robinson has asked for some modification of that. I will be glad to say again, I will define the conspiracy again, if you want me to.

(Mr. Williams) No, no.

(The Court) I will grant it.

If you feel that this instruction says that a conspiracy was formed for the purpose of doing this—it is taken from Mr. Williams' language and not mine. I accepted it. Now, if you except to that and want a further re-definition of a conspiracy, I will be glad to give it.

(Mr. Genn) I do not know what you intend to say. I feel the Court erred and would be underscoring it at this time.

(The Court) If you feel I erred, I shall be glad to correct it. Mr. Robinson has asked me to correct it so far as he is concerned by putting in 1960 and 1961.

I am going to give the instruction again at Mr. Robinson's request putting in for him 1960 and 1961. And Mr. Robinson wants to be sure.

(Mr. Genn) Your Honor, I am going to object to that. I do not see the basis of it. What do you intend to say?

(The Court) Mr. Robinson wants me to say this. If you do not want me to say it, I will not say it and if you say that that instruction which Mr. Boykin asked for and which Mr. Robinson has now asked for misstates the conspiracy, because I do not in that instruction repeat what I said about the nature of the conspiracy, I will agree that you may have something to your point and if you wish me to restate

it again, I will. I would really think that the defendants might be as well off by just letting things stand as they are because even without my repeating what Mr. Robinson has asked for, if no other instructions are to be given I think there is some question of whether you want that in again with the corrected date. Now, if you wish me to—

(Mr. Genn) I think this instruction that you have handed to me which is not, of course, of record yet is highly prejudicial to this defendant—

(The Court) Mr. Robinson will probably withdraw it if there are no other additional instructions being given, I imagine. If you think that that particular paragraph, of course, which you are taking out of context, is prejudicial to you, I will correct it in a way that will cure the prejudice if you want.

I do not think it is prejudicial because I think it was given in context with a good many statements with respect to the conspiracy which have not been claimed to be unfair by anyone yet. If you want them repeated, I will give them again.

(Mr. Genn) Well, Your Honor, I do not wish to pursue it. I simply want to find out what you would, in effect, say. If it is going to be lengthy or repetitious of what you said before, I think there is more harm than good. If it is going to be a short statement that you have to find defrauding of the governmental functions then I think that that may suffice.

(The Court) In one of the ways specified.

(Mr. Genn) I think that should be sufficient. Otherwise I will withdraw the objection.

(The Court) I think you had better—

(Mr. Tydings) For the record—

(Mr. Williams) I join the U.S. Attorney. I think you might hurt your client more than you will help him by what you say here.

(Mr. Genn) I think that is nice to say but we have to preserve the record.

(Mr. Williams) It is just going to put a spotlight on something when you say "any person who joins." You are a person, right.

(Mr. Robinson) Yes.

(The Court) Didn't I say the same principles. Which page is that? What page is it?

(Mr. Robinson) I do not know which page it is. Twenty, I think it was.

(The Court) I may have missed saying there what I have said to everyone, the same instructions apply to Mr. Edlin and Mr. Robinson. You did not ask for that because where there was a request from you people for that I did put in that—

(Mr. Robinson) I concede that not having realized the possibilities until I saw it typed up.

(The Court) I should have said "the same principle applies to you" which would have taken care of it.

(Mr. Genn) Your Honor, I suppose it is clear based on the previous motions on the theory of the Court based on the substantive counts particularly; we have that exception, of course.

(The Court) That is right.

(Mr. Genn) I think more specifically in addition to that when it states at 35: "A Congressman has been employed as a lawyer to represent a defendant in a criminal case and to do anything necessary and proper to be done in the conduct of the defense of the criminal case."

(The Court) What page?

(Mr. Genn) That is on page 35.

It seems to me that the Court is implying that whatever he does at the Department must be in the conduct of the

defense and I am not certain that that was what the Court intended.

If it did, of course I would except even further to that. I do not think the going there merely had to be in the conduct of the defense. Underscoring the words "in the conduct of."

(The Court) I thought we changed the word "conduct." I thought that was changed at the bench. Isn't that what was changed at the bench to make it read more in accordance with what the defendant wanted and to answer Mr. Tydings' suggestion of the preparation of the defense? I think that takes care of it.

(Mr. Weiner) It could not have been more explicit with the "swapping" and all the rest of it. It seems to me in reference to going past the exception, I am not clear the Court's instruction indicated the element of compensation with reference to the exception but to go to page 42, I think it says he is appearing as an attorney for one or more of the defendants in the criminal case, pending criminal case and not in his capacity as a Congressman, disinterested Congressman, or (2) that Johnson brought to bear his influence as a Congressman on the officials of the Department of Justice in an effort to secure a dismissal of the criminal case, then you should find the defendant Johnson guilty."

I think it had to be clear that if he were bringing to bear his influence it had to be as an interested Congressman using undue influence in the case. I do not think that that is clear.

(The Court) I think the instruction is right on page 42 and I granted you the exception to the instruction.

(Mr. Robinson) The only thing further I would have I would withdraw the requested instruction but at the time when the instructions were submitted, I believe I adopted with the Court the instructions 4, 5, 6, 7, 8 of Mr. Boykin's.

(The Court) I will give you every exception that Mr. Edlin has and every one that Mr. Boykin has that could possibly apply to you. Is that all right?

(Mr. Robinson) That is about as far as you could go, I reckon.

(Mr. Doub) When here I excepted to Your Honor's definition of "services rendered" as contained in the statute, Your Honor said you would be interested in having me suggest a better definition and I would like to urge upon you the acceptance or renewal of my request No. 15 under substantive counts.

(The Court) All right. Granted, if you want it.

(Mr. Genn) May we see it?

(Mr. Williams) George, you do not want that now.

(The Court) I will grant it if you ask for it. I will read it.

(Mr. Williams) I think the definition of "Services" in the first place, I do not think that is an issue in this case, to tell you the truth.

(The Court) If Mr. Doub wants that, I will grant it.

(The following proceedings occurred in open court with the jury present.)

(The Court) Have you decided to request that one?

(Mr. Doub) No.

(The Court) Members of the Jury, counsel for the defense have been spending the past forty minutes trying to convince me that I have made some mistakes in my charge. I was only convinced I was on the fence on one of them and they decided not to press that one. Therefore, you will now be allowed to retire and begin your deliberations on the case under the instructions as they have been given to you as soon as the bailiff has been sworn and Mrs. Zielinski will give you the indictment in the case.

If you feel that you need any of the exhibits in the case, you may send out and say the exhibits you want and I will discuss with counsel at the appropriate time whether they want to handle the matter on a point by point basis or whether they want to adopt some sort of a general rule.

Now, I want to dismiss the alternate jurors in the case. You certainly have been faithful in your attendance and it is a matter of regret to the court that you will not be able to take an active participation in the conclusion unless some one of the jurors feels that they are not well and would not be able to see through to the end, I think we should go ahead with this. There have been 12 jurors so the three alternates are now discharged from further consideration of the case.

Now, would you swear the bailiff and then—

(The Clerk) We are going to have two bailiffs.

(The two bailiffs were duly sworn.)

(The Court) I think it will be well to give them a pad and pencil and papers when they are sent out. Now, if you send notes out to me for one reason and I send them back in with any instructions, your foreman should preserve them all and hand them in when you have reached your conclusions.

(The Clerk) The jurors may retire to their room to deliberate.

(At 2:55 p.m. the jury retired to consider its verdict.)

(The Court) The Foreman of the jury has asked if he may have the instructions of the Court on the legal matters. Suppose you go out, Mr. Menzies. I think you ought not to see who does want to and who does not want to. What you are asking is the charge. I will hear from counsel.

We have not discussed that yet and I will let you know at once whether you may have it or not.

(The foreman left the court room.)

(The Court) Is there any objection from any of government counsel, or counsel for the Defendants to the entire charge being sent to the jury? I think there is only the slightest difference in what I wrote. You all followed what I wrote and what I read. The main thing is that in connection with the various paragraphs of the indictment which they have before them which are referred to in each paragraph—since there has been a request, it has not been the custom in this Court to do it simply because, as a physical matter, it is ordinarily not possible to have it written up. In the days when the charge was given before the arguments of counsel—In the days when Judge Soper was here— it was his regular practice that the reporter would write it up during the argument of counsel and he always gave his charge to the jury at that time.

When the charge is given at the end, ordinarily it is not prepared with any such care as this and I may say this is the first time that the jury has ever asked for it.

(Mr. Tydings) If Your Honor please, the Government has no objection. If the jury wants the instructions on the law, they should have them.

(Mr. Genn) Your Honor, speaking for one defendant, Mr. Edlin, I do not think that the Court should submit the instructions. I think that there is a tendency when that is done in that form to pick out various portions of it and if there is particular concern that the jury may have as to one item, I believe that it is more appropriate if they inquire as to that particular thing and the Court may be able to give them an explanation, because you cannot segregate one portion of the charge from another and, as I understand the Court's instruction the whole charge is supposed to be taken together and it seems to me there is a tendency in such instances as to emphasize one particular portion.

(The Court) We can bring them back and tell them it is to be treated as a whole and if they wish further instruction on any point, they can come in and ask for them.

(Mr. Genn) Trusting it would not bear on this defendant for objecting to it, I do believe that it is not necessary under the circumstances and I would object.

(Mr. Doub) I do not object.

(The Court) Mr. Williams?

(Mr. Williams) I do not object.

(The Court) Mr. Robinson?

(Mr. Robinson) No, sir.

(The Court) The Court will send it in.

(Mr. Williams) I would call Your Honor's attention to it. The only disturbing factor to me is that you did in your charge properly I think, summarize the indictment and they already have a copy of the indictment so it is in effect emphasizing allegations of the indictment, I think to an excess for them to have it.

(The Court) Would you like me to withdraw those four pages in which I attempted to summarize the indictment? I think that is not unreasonable.

Bring the jury in.

(Mr. Tydings) I am afraid if you take out a part of the charge, you would confuse the jury.

(The Court) The only thing I would take out would be the summary of the indictment.

(Mr. Tydings) Then bring back the jury and explain to them what you are doing.

(The Court) I will do that.

Bring them in.

(Mr. Doub) Your Honor added the word "compensation" at the end of one sentence. Do you have that?

(The Court) I have it.

I think there are two parts. If counsel will come up here, I think we can straighten it out.

(The Jury returns.)

(The Court) Mr. Menzies, in your first place, there was not entire agreement or understanding as to what you asked for. You said "the legal instructions." Did you mean the entire charge, or just part of it?

(The Foreman) The more the better. We would like to take it all if we can but if not, we will take whatever you decide.

(The Court) There is a difference of opinion among the lawyers as to whether it should be done or not. It has not been customary in this Court to do it. I think the Court has a right to do it. I loathe doing it over the objection of some of the defendants, particularly as to the summary of the counts of the indictment. You have the entire indictment and my summary would not control, of course, the language of the indictment. It controls what is charged and not the summary that the Court made.

I suggest you start without it and if you find you need it, you need instructions on any particular count, you can come back and ask for them. If you want the whole thing, you can have it. One of the things that worried some of the counsel was you might read a part, one page or two pages and consider that by itself without considering it in the light of the entire charge and as I told you the charge must be read as a whole, or some portions of it control and modify others. So, if you have specific instructions you want on a particular point, I would probably read you not only that one page but perhaps a part of other pages which throw light on it. If you will start that way, on the other hand if you find that you have a great many questions that you want, counsel and the Court will reconsider the matter.

Does anyone have any objection to the jurors' taking the extra copies of the indictment—the original always goes in?

(Mr. Genn) No.

(The Court) All right. The jury may take these extra copies with them.

TRIAL PROCEEDINGS

(Vol. 1 [41]) (Mr. Genn) Your Honor, I am constrained certainly for the record at first to indicate an objection to any reference to a criminal record or facts which would suggest a criminal record in the opening statement. I should like not to interrupt.

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[44] (Mr. Genn) I have made the objection for the record, Your Honor, as to this particular point on the indictment. I think what may be a more significant point concerns itself with anything outside the indictment.

(The Court) Now, tell me what you have.

(Mr. Genn) I do not know what the government intends to bring in. I suspect they may bring in other [45] overt acts or offenses.

(The Court) Let us see. Certainly, as it may be directly related to the indictment and not prevented. This is the first time anyone has suggested to me that the Government might, because it was not until this morning when you mentioned it that I knew that Meyer, the man mentioned in 42, 43 and 44, was a probation officer and had anything to do with any previous conviction of Edlin.

I did not know myself until this morning that Edlin had ever been convicted of anything except his conviction on plea of nolo contendere in case No. 25—

(Mr. Marion) It was not that number. It was as a result of that and a superseding indictment.

(The Court) In whatever indictment that came in this case. You mean there are two?

(Mr. Tydings) The word "intentional" was left out and there was a re-indictment two or three weeks before he pleaded nolo contendere. But one word they could not agree on a stipulation—

(The Court) So far as I am concerned, up until this morning that was the only conviction or only evidence as far as I knew, that and this were the only two charges, the only ones which had ever been filed against Edlin. I knew of no other. Now, it has since developed that this Meyer [46] was a probation officer and in connection with some previous difficulties of Edlin. Can you tell me what the facts are?

(Mr. Doub) Just so you understand the problem at the outset, the position of Mr. Johnson that he has a constitutional right in this case to develop any matters which were the subject of discussion at those meetings in the Justice Department and one of those matters relates to this probation officer. How he happened to be there.

(The Court) I want to get the facts now.

(Mr. Doub) Yes. But, on the other hand, I concede that Mr. Edlin has a constitutional right not to have it mentioned.

(The Court) Well, you cannot both have a constitutional right not to have it mentioned if he engages in a conspiracy whereby the man brings it down. I am not saying that he did but that is the charge. If it is not sustained.

(Mr. Genn) This was a conspiracy.

(Mr. Doub) They said that the Judge should have severed that defendant out.

(The Court) What defendant? How can you sever a defendant out of this conspiracy in the nature of things. It seems to come in anyhow. It does no good. If the Government makes the same charge, you cannot lose what the conspiracy was and what was done pursuant to [47] the conspiracy by severing anybody out. You can on substantive counts, you can sever them out but you cannot sever them out and you cannot sever between Johnson and Edlin, you

cannot sever them out of several counts under these circumstances.

* * * * * *

[52] (Mr. Tydings) Before the Jury, Mr. Genn, the Government does not wish to prejudice the defendants in any way.

We take the same position the Court does and if you wish to prepare some sort of statement along this line for me, I will include something in my opening statement to that effect.

(Mr. Genn) No, I feel it should not be mentioned and—I feel it should not be mentioned and I feel my legal position—

(The Court) You cannot avoid the present indictment. I have ruled. You cannot avoid the pending indictment [53] with which the whole conspiracy is bound. Now, if you want a statement made about that, what I am considering is what was the 1941 indictment and if you will give me your authorities and Mr. Doub will give me his authorities, I will be glad to read them. I do not want Edlin to be unduly prejudiced.

(Mr. Genn) I have made the objection for the record.

* * * * * *

(Vol. 2 [56]) (The Court) I am ready to rule but I will rule publicly except on one point and the one point that I wish to rule on the record but privately is Mr. Genn's motion in which Mr. Genn has moved that the Court instruct the United States Attorney in his opening statement not to refer either to the indictment against Edlin et al, in the United States District Court for the District of Maryland—which is referred to repeatedly in the indictment and is the basis for most of the alleged conspiracy.

Now, I overrule that motion.

He has further asked the Court to instruct the U. S. Attorney not to refer to any other previous indictment against Edlin or any previous conviction of Edlin in his opening statement and indicates that, he proposes to object

to the introduction of any evidence with respect thereto if offered.

The Court accepts without question the general principles stated by the Supreme Court in Michaelson 355 U. S.—whatever it is—and the Court has endeavored to [57] be guided by Michaelson in its rulings for a long time. This case is exceptional in that the reference which Mr. Tydings proposes to make is to the matters set out in overt acts 41 to 44 which deal—as I understand it—with the acts of Defendants Johnson, Boykin and Edlin, in collaboration and alleged to have been in furtherance of the conspiracy in bringing a parole officer of the United States District Court for the Northern District of Illinois to Washington in order to say to the Department of Justice that the defendant Edlin had been a good parolee when he was on parole following his sentence in 1941 or 1942 in the Northern District of Illinois; that the point that is being made by the Government, as I understand it, is that these alleged overt acts were in furtherance of the conspiracy as an attempt to persuade the Department of Justice that Edlin was the sort of man who should be given the consideration which they were requesting.

The Government contends that this is an important element of the conspiracy and that these overt acts are important overt acts. I have carefully considered Michaelson. I have been cited no case which applies Michaelson in a conspiracy case to prevent the government from proving essential elements of the conspiracy or overt acts in furtherance of the conspiracy.

The Court would not be disposed to even, in a [58] conspiracy case, allow the Government to drag in uncomplimentary evidence of bad character which had little or no relevance or materiality to the issue.

However, I think, from everything I have heard in the arguments so far that is not the purpose of the Government and I do not think that would be the effect of the evidence,

just to drag in something that has no materiality. This seems to me to be material.

However, the indictment does not state for what Edlin was convicted in 1941 and I will repeat here what I said off the record to Mr. Tydings and Mr. Edlin that I will instruct Mr. Tydings not to state what Edlin had been convicted of unless counsel for Edlin requests that the nature of the crime be disclosed.

I further instruct Mr. Tydings, or whomever is making the opening statement for the Government, to make any reference which may be made to the overt acts 41, 42 and 43, brief and that the Government make no effort to argue bad or to suggest bad character on Edlin's part in its opening statement.

I expect the Government to be controlled by the spirit of the Michaelson decision.

(Mr. Tydings) We had not intended to do so.

(The Court) Recognizing that the permission to bring in the testimony of the parole officer, or the [59] testimony in connection with him which will necessarily show a prior conviction is an exceptional circumstance which should not be used to wipe out the good effect of the Michaelson rule.

* * * * * *

[66] OPENING STATEMENT OF THE GOVERNMENT

(Mr. Tydings) If Your Honor please, Ladies and Gentlemen of the Jury: My name is Joe Tydings and I have the honor and the companion responsibility of being your United States Attorney for the District of Maryland.

During the next several weeks, the responsibility will be mine, together with my assistants, to present the facts of evidence which support the indictment, under which the defendants are charged in these proceedings. Seated on my right and assisting me in the trial of the case, the Assistant U.S. Attorney J. Hardin Marion and on his left, Special

Assistant U.S. Attorney Arnold Weiner. On Mr. Weiner's left also assisting me, Special Assistant United States Attorney Arthur Burnett.

Seated at the next trial table are the counsel for the defendants in this indictment. Mr. George Cochran Doub is counsel for the defendant Congressman Johnson.

Mr. Edward Bennett Williams is counsel for the defendant Congressman Boykin; Mr. Harold Ungar is associate counsel for the defendant Boykin.

Seated on Mr. Ungar's left is Mr. William Robinson, a defendant and serving as counsel also. At the far end of the trial table is Mr. Nathan Brown and Mr. Edward L. Genn, counsel for the defendant Kenneth Edlin.

* * * * * *

[70] Now, ladies and gentlemen of the jury, despite its rather formidable appearance and length, the indictment in this case—the charge of the grand jurors for the District of Maryland—is clear and, as concise as possible under the factual circumstances as they existed.

Section 371 of Title 18 makes it a crime in the United States to conspire to defraud the United States of America.

The first count of this indictment charges Congressman Johnson, Congressman Boykin, Mr. Edlin and Mr. Robinson with conspiring to defraud the United States of the fair and impartial services of its two Congressmen, Congressman Johnson and Congressman Boykin. The first count of the indictment is brought under that Section.

The Second through the Eighth counts of the indictment are brought under 281 of Title 18 which makes it a crime for any member of Congress to appear before any Federal Department or Agency for any compensation [71] or agreement to receive compensation whatsoever.

* * * * * *

[86] Ladies and gentlemen of the Jury, the facts adduced in evidence in this case we feel will show beyond any doubt

influence peddling by Congressman Johnson of Maryland and Congressman Boykin of Alabama. As the testimony unfolds and the exhibits are offered into evidence, you will be able to perceive that from April 1, 1960 until December 31, 1961, first Congressman Johnson and then Congressman Boykin in effect went on the payroll of the defendant J. Kenneth Edlin and his organization, and that these two Congressmen put the full power and prestige of their office as Members of the Congress of the United States at the disposal of the defendant Edlin and the defendant Robinson, Mr. Edlin's chief lieutenant, confidant, and personal attorney.

During the spring of 1960, Ladies and Gentlemen of the Jury, shortly after the indictment referred to was returned against the First Colony Savings and Loan Association, Mr. Edlin felt that the First Colony Savings and Loan Association needed respectability. Mr. Edlin also needed a promotional sales gimmick, something to support the solicitors of the First Continental Savings and Loan Association, who were [87] seeking to secure deposits and were meeting an argument that commercial insurance was not as good as Federal insurance.

The defendant Edlin found the answer to both requirements. The answer was a speech to be given on the floor of the House of Representatives of the United States.

During the latter part of April, during the month of May and continuing into the early parts of the month of June, 1960, drafts of such a speech were prepared by the defendant William L. Robinson and were edited and corrected by Mr. Edlin's personal public relations man, Mr. Martin Heflin, of Washington, D. C., and these edited drafts were delivered to Congressman Johnson's office.

However, there was one problem, Ladies and Gentlemen of the Jury, there was no valid excuse for the delivery of such a speech. However, Mr. Martin Heflin, the public relations man of Mr. Edlin, directing Mr. Edlin's personal

Institute of Independent Savings and Loan Associations, discovered the excuse.

On May 27, 1960, in the inside pages of the financial section of the Evening Star of Washington, D. C. there was an article reporting a speech in which a Washington, D. C. savings and loan executive warned the public and Maryland depositors in particular against depositing money in certain phoney savings and loan associations advertising high dividend rates and commercial insurance.

[88] This was the excuse needed for the delivery of the speech, and on June 30, 1960, Congressman Johnson delivered a speech at Mr. Edlin's request containing material which Mr. Edlin wished to be contained in the speech.

Fifty thousand copies of that speech were ordered printed by Congressman Johnson's office, and they were delivered to the First Continental Savings and Loan Association out at Bethesda, Maryland, Mr. Edlin's association, and they were there kept and used as part of the solicitation campaign to seek new deposits for the First Continental Savings and Loan Association.

They were used to mail to prospective depositors not only in Maryland but in other states.

Now, the Government will show and the evidence will prove that in the months following the June 30th speech, there still remained one primary obstacle to the defendant Edlin's future financial success and the success of his many and varied business enterprises, and that was the pending mail fraud indictment against both Mr. Edlin and the First Colony Savings and Loan Association.

During this same period of time, Ladies and Gentlemen of the Jury, the defendant Congressman Frank W. Boykin, Senior Member of the Alabama Delegation to the Congress of the United States, was having trouble of a different nature.

A few years prior, in the early and middle 1950's, [89] his family company, the Tensaw Land and Timber

Company of Alabama, had purchased two large tracts of timber, one located in Charles County, Maryland, near Waldorf, and one located in Stafford County, Virginia. both had been timber, both tracts of land, and later sold for many times their original cost. However, the purchasers of the Virginia tract had gone bankrupt, and Congressman Boykin was forced to buy the land back at a foreclosure sale in 1958, and the purchasers of the Maryland tract as of the late fall of 1960 and early spring of 1961, were in default on their mortgage, and unless new financing were found for them this tract, too, would have to be foreclosed and bought back at such a sale.

It was at this time that Congressman Boykin entered the conspiracy. However, the consideration which Congressman Boykin exacted from the defendant Edlin for his participation was not small. The Government will show that the consideration was this: That Mr. Edlin, using the deposits of the funds available from his two Maryland controlled savings and loan associations, the First Colony and the First Continental, would provide the necessary financing to bail out or refinance the defaulted purchasers of Congressman Boykin's Maryland tract of land, or if absolutely necessary Mr. Edlin was to set up two companies and using the funds from his two savings and loan associations actually purchase both tracts [90] in their entirety from Congressman Boykin's company, the Tensaw Land and Timber Company.

In return Congressman Boykin was to use his full prestige as the senior member of his delegation to Congress to exert pressure on the high officials of the Department of Justice to dismiss the case against J. Kenneth Edlin.

Beginning with the 25th day of March, 1961, and running through November of that same year, a period of a little over seven months, Ladies and Gentlemen of the Jury, Congressman Boykin and Congressman Johnson personally contacted the Department of Justice together or singly an average of once every three days in an effort to have this case dismissed, and later in the fall of 1960, when it appeared doubtful that the case would be dismissed, they

continued to exercise their influence to have the case delayed sufficiently so as to enable the defendant Edlin to complete certain land transactions in which both Congressman Johnson and Congressman Boykin had a personal interest.

During the months of May, June, August and September of 1961, scarcely a day went by without one or the other of these two Congressmen making one type of contact or another with the Department of Justice. They made these contacts, Ladies and Gentlemen, as Congressmen of the United States, ostensibly acting in the public interest and for the welfare [91] of all of the citizens of our United States, all the while carefully concealing from the Department of Justice the true facts that each had a substantial personal financial stake in the dismissal of this case.

The Government will show that during this same period of seven months Congressman Boykin received checks payable to Tensaw Land and Timber Company totaling over $250,000. The Government will show that during this same period of time the defendant Congressman Johnson received checks and cash totaling over $20,000. The evidence will prove that these two Congressmen exerted a veritable drum beat of pressure on the Department of Justice and its officials, even going so far, Ladies and Gentlemen of the Jury, as to use the power and prestige of their office to cause the defendant Edlin's former Federal parole officer in Chicago to fly to Washington, D. C., under the pretense of assisting the two Congressmen in their official duties, and when the parole officer arrived the two Congressmen whisked him over to the Department of Justice to show that Edlin had had a good parole record while under this parole officer's supervision some time before.

Evidence will be introduced in addition showing that an additional inducement to the efforts of both Congressmen Johnson and Boykin to have this case dismissed, that as an additional inducement Mr. Edlin promised the two Congressmen [92] that they would share materially in his profits on a tremendous, pending land deal. Of course, the success

of the tremendous pending land deal was made contingent upon the dismissal of the indictment involving Mr. Edlin.

In this case, Ladies and Gentlemen, as in every conspiracy case, the parties involved did not meet in an exposed area, subject to the scrutiny of their fellow citizens, nor did they execute any signed, formal contract. Quite the contrary, the defendants herein took elaborate steps to conceal the nature and the object of their conspiracy and the source and the method and the purpose of the payments.

During their contacts with the Department of Justice the two Congressmen, Boykin and Johnson, carefully concealed their personal financial stakes, and at the same time gave a number, a variety of purported reasons, to the officials of the Department of Justice for their interest in the Edlin case, so as to lend credence to their guise of intervention in the public interest.

The evidence will show a very sophisticated manner in which the payments of cash and the checks were made to both Congressmen. When Congressman Johnson became a part of the Edlin organization, in the early spring of 1960, he was paid not by the defendant Edlin, not directly by the First Colony or the First Continental Savings and Loan Association, no, indeed. The defendant William L. Robinson [93] would draw a check upon his personal Miami, Florida, bank account and mail that check to the Defendant Congressman Johnson, and each time the defendant Robinson issued his personal check from Miami to the defendant Congressman Johnson, the defendant Edlin would instruct the bookkeeper at the First Continental Savings and Loan or the First Colony Savings and Loan Association to issue a check to Mr. Robinson to cover the check he had mailed to Congressman Johnson.

Many times at the time Mr. Robinson mailed his check to Congressman Johnson, he didn't have anywhere near sufficient funds to cover the issuance of the check to Congressman Johnson, but, of course, the reimbursement from the First Colony or First Continental Savings and Loan Association always arrived to cover the check.

(The Court) Mr. Tydings, you have been fifty minutes. I don't want to rush you, but if you are going to be much more than an hour, I think it would be well to take a break at some time, a very short break.

We will take a five minute recess.

(Whereupon, a short recess was taken.)

(Mr. Tydings) May it please the Court, Ladies and Gentlemen of the Jury: Just before you had recessed I had discussed a little bit about the Government's evidence relating to the matter of Congressman Johnson's compensation, [94] and the fact that Mr. Robinson would mail a check from Miami, Florida, up to Congressman Johnson in Maryland, and then Mr. Robinson would be reimbursed from one or the other of Mr. Edlin's savings and loan associations, the First Continental or First Colony, and the notation or instructions given to the bookkeeper would invariably be "legal fees" or "legal."

The evidence will show, Ladies and Gentlemen of the Jury, that from time to time Congressman Johnson was actually given shall legal chores, such as receiving a letter of a legal nature from William R. Robinson or sitting in on a conference with J. Kenneth Edlin, or retaining or hiring a lawyer from time to time for doing some legal work for one of Mr. Edlin's savings and loan associations. We will show all of this was done to lend color to the receipt of a substantial number of checks under the color or guise of legal fees.

The Government will prove that although over $20,000 worth of checks were issued payable to the law firm of Johnson and Johnson, that not one cent from these checks was deposited in the law firm bank account, nor was it ever listed as received in the books of account of the law firm. Indeed, the active member of the law firm of Johnson and Johnson had never even heard of the checks, Ladies and Gentlemen of the Jury. They were all deposited in Congressman Johnson's personal account in another bank in another town.

On the night of the 23rd of October, 1961, on the [95] eve of a trip around the world which Congressman Johnson was to take, he met with the defendant Mr. Edlin in the lounge of the Woodner Hotel in Washington, D. C., and at that time $3,000 in traveler's checks of the Republic Bank of Dallas, Texas, was given by Mr. Edlin to Congressman Johnson.

Evidence will be introduced to show that these traveler's checks were purchased by the First Continental Savings and Loan Association acting under the instructions of Mr. Edlin, but that later that same evening William L. Robinson reimbursed the savings and loan association from his personal account in Miami, and that the same night or the next day Mr. Edlin directed that one of the land companies reimburse Mr. Robinson for the $3,000.

Now, during the course of the trial, as the Government produces its case, as we have witnesses testify before you, it is naturally impossible for any single witness to cover the entire case or any piece of evidence to uncover the entire case. Naturally each witness will testify about the area with which he has knowledge and each piece of evidence which we offer will have relation to a certain part of the case. For that reason, I would like to give you a short rapid chronology of events to assist you in tying in where each witness's testimony appears in our complete case, and for that purpose it is necessary to go back to the year 1958, because in that year 1958 the defendant Edlin was operating his [96] personal financial company in Miami, Florida, known as the First Continental Mortgage Company.

In February of 1958 Mr. Edlin caused to be incorporated two savings and loan associations in Maryland. 1, the First Continental Savings and Loan Association, which was not activated for two years, and the other, the First Colony Savings and Loan Association, which although it had an office in Prince Frederick, Calvert County, Maryland, was run from Mr. Edlin's Miami office in the Huntington Building, Miami, Florida.

Now, those are the first significant events in our story. The next significant event, Ladies and Gentlemen of the Jury, was the November 17, 1959 indictment by the Grand Jury for the District of Maryland returned in this Court against the First Colony Savings and Loan Association, J. Kenneth Edlin, Rosabelle Edlin, James Bridges and Jackson D. Rains.

Four months after this indictment, April 1, 1960 three years ago today, if you will, the conspiracy got underway, when Martin Heflin, Washington public relations man, at Mr. Edlin's direction, took off from the Washington National Airport for Miami, Florida. It was during those months of April, May and June, the work was done on the preparation of the speech, which I have already outlined to you, Ladies and Gentlemen of the Jury.

[97] It was during these months at a luncheon at the Congressional Hotel in Washington, D. C., that Mr. Martin Heflin and Mr. J. Kenneth Edlin gave Congressman Johnson the resume of the material which Mr. Edlin wished Congressman Johnson to cover in his speech to be given at some later date on the floor of the House of Representatives.

This period of time is significant also for another reason, Ladies and Gentlemen of the Jury. After the indictment of First Colony Savings and Loan Association, Mr. Edlin made the decision not to press this association's business activities further, but rather to activate his other dormant charter; that is, the First Continental Savings and Loan Association, and in that same spring, that is, May 1, 1960, the First Continental Savings and Loan Association had its formal opening in Bethesda, Maryland, and most of the Edlin organization or entourage was brought from Miami, Florida, up to Maryland to actually work in the Bethesda office.

It was on the 20th day of June that same year, 1960, that the first check was issued by W. L. Robinson to Thomas F. Johnson, a check for $500, issued and reimbursed in the same manner which I have already described to you, and ten

days later on the 30th of June, Congressman Johnson delivered his savings and loan speech.

Two months later, on August 30th, a second check [98] was issued by W. L. Robinson to Mr. Johnson, this time in the amount of $1,000.

On November 4th of that same year William L. Robinson issued another check to Congressman Johnson. This time it was a check for $300 made payable to Russell L. Hickman, Campaign Dinner Treasurer.

This is an interesting piece of evidence here, Ladies and Gentlemen. On the same day that William L. Robinson issued that check and mailed it up to Congressman Johnson, he was reimbursed by First Continental Savings and Loan Association check in the same amount, and that check was charged in the Association's books of account as "legal fees."

On January 7, 1961, February 2, 1961, March 6, 1961 and April 5, 1961, William L. Robinson issued checks on each date in the amount of $800, each payable to Johnson and Johnson, and was reimbursed each time in the same manner.

Now, it was early in February, Ladies and Gentlemen of the Jury, early in February of 1961, that Congressman Johnson and Congressman Boykin and the defendants Edlin and Robinson first sat down together and began to earnestly plan an approach to the Attorney General of the United States and other high officials of the Department of Justice, in order to secure a dismissal of the case aforementioned, and at [99] that time, at that meeting, a decision was reached that perhaps it would be wise to prepare a synopsis of the case, challenging each count of the indictment which had been returned in 1959, and to have that synopsis for presentation to the Attorney General or other officials of the Department of Justice, and accordingly, early in March of 1961, William L. Robinson and others began working on this synopsis in Miami, Florida, and on March 3, Congressman Johnson flew to Miami to confer with Mr. Edlin and Mr.

Robinson about the contents and the length of the memorandum.

On the 22nd day of March the memorandum and synopsis was completed, and on that same day Congressman Boykin, who was a personal acquaintance of the Attorney General, called him for an appointment on a personal matter.

On Saturday, March 25th, Congressman Johnson and Congressman Boykin made their first visit to the Department of Justice, on this occasion visiting the Attorney General of the United States for the purpose of securing the ultimate dismissal of the mail fraud indictment against Mr. Edlin.

Three days later on March 28th Congressman Johnson had the synopsis sent over to the Attorney General by hand messenger, and he had a covering letter and a memorandum which was signed Thomas F. Johnson, Member of Congress.

On April 12th Congressman Johnson and Congressman Boykin again went to the Department of Justice, and this [100] time they were referred by the Attorney General to the Assistant Attorney General of the United States in Charge of Criminal Matters, Mr. Herbert J. Miller.

From this date until November of 1961, Congressman Johnson and Congressman Boykin made over sixty completed contacts with the Department of Justice; that is, actually talking to them or actually mailing something to them, and a great, great many more uncompleted; that is, telephone calls which were not returned.

During the month of May 1961, Ladies and Gentlemen of the Jury, $10,000 in checks were issued to Congressman Johnson from the First Continental Savings and Loan Association and the First Colony Savings and Loan Association. They were issued on two separate dates. On each date the amount of $5,000 was issued, one check being from the First Colony and one from the First Continental.

[101] The First Continental Savings and Loan Association checks were cashed during the month of May. However,

some time after the month of May, some time before the books were completed, around the first week in June, the First Colony checks were returned. They were not cashed. The endorsement was removed and in the early part of May a check was issued by the First Continental Savings and Loan Association in the amount of the two checks of the First Colony, the Association under indictment which had been returned and the endorsement on which checks was removed.

One other interesting development, in the Month of May, 1961, Ladies and Gentlemen of the Jury, during that month Mr. Johnson executed a lease with the First Continental Savings and Loan Association providing that the First Continental Savings and Loan Association would use his law office in Snow Hill, Maryland for a branch office of their savings and loan association at a monthly rental of $200.00 a month. Congressman Johnson actually received $800.00 as a result of that lease even though no office was ever opened in Snow Hill. No account was ever received nor any loan ever made.

On June 31, 1961, the First Continental Savings and Loan Association issued a check for $3,250 to Johnson and Johnson.

[102] On August 1, William L. Robinson issued a check for $2,000 to Johnson and Johnson and was reimbursed in the usual manner.

On September 12, William L. Robinson issued a check for $1,500 to Johnson and Johnson and was reimbursed in the usual manner and finally, on October 23, as I have already recited to you, the Travelers check passed hands.

One other significant date, Ladies and Gentlemen of the Jury, on October 24, Congressman Johnson left for his trip around the world. On November 17, Mr. Edlin was formally arraigned before the United States District Court of the District of Maryland and that weekend after his formal arraignment, when it was apparent that the trial was imminent, Mr. Edlin and his right-hand man, the defendant

Robinson, winged their way to Mobile, Alabama, where they registered at a hotel in Mobile and the following Monday, Congressman Boykin calls the Assistant Attorney General Herbert Miller.

I am sorry, Ladies and Gentlemen of the Jury, if the opening statement of the government was too long. However, you will be happy to know that I cut it in half from what it originally was at the request of my associates.

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(Vol. 3 [146]) (The Court) Mr. Doub made some statement that an agreement to receive was necessary. It isn't so. The statute says receives or agrees.

(Mr. Doub) I thought I covered both.

• • • • • •

(The Court) I thought the whole pitch of the argument at that point was that there had to be an agreement for receiving payment. However, there is no use—I don't want to emphasize any particular aspect, although I do think it is the only mistake of law that I noticed.

(Mr. Tydings) There was one other mistake of law, Your Honor. In the last minutes of his opening statement he inferred that the law insofar as the second to the eighth count was that the Government would have to prove that he received the entire check as compensation for appearing before the Department of Justice; whereas the law is that we only have to show that any part of that money was consideration.

[147] (The Court) I think that was clear enough not to make any point of it.

• • • • • •

[151] Thereupon,—

JACKSON D. RAINS

was called as a witness on behalf of the Government, being first duly sworn, was examined by counsel and testified as follows:

(The Clerk) State your name for the record.

(The Witness) Jackson D. Rains.

[152] (The Clerk) How do you spell your name, sir?

(The Witness) R-a-i-n-s.

(The Clerk) Take the stand, please.

Jackson D. Rains.

DIRECT EXAMINATION

By Mr Weiner:

Q. Please give your address for the Jury. A. 6543 Southwest 78th Terrace, Miami, Florida.

* * * * * *

Q. Can you tell us, sir, whether you have ever been employed by any of the defendants in this case? A. Yes, sir, I have been employed.

Q. And by which of the defendants? A. I was employed by the First Continental Mortgage Corporation by Mr. Edlin.

Q. And it that Mr. J. Kenneth Edlin? A. J. Kenneth Edlin.

* * * * * *

[153] Q. Can you tell the ladies and gentlemen of the Jury when you were hired, when you were first hired? A. I was employed in August of 1958.

Q. And for how long did your employment continue? A. I was employed from that date until February of 1962 by various corporations.

Q. And where was it that you were hired? A. In Miami, Florida.

Q. And who did the hiring of you? A. Mr. J. Kenneth Edlin.

Q. What generally was your job; that is, what you were hired as? A. I was hired as an accountant.

* * * * * *

[155] Q. Now, in the course of your employment down there did you have occasion to meet the defendant William L. Robinson? A. Yes, sir.

Q. And how and under what circumstances did you meet him? A. Mr. Robinson did occasional jobs for First Continental Mortgage Corporation, which consisted principally of foreclosures on property and things of that nature.

[156] Q. Did there come a time when he began to play another role in the organization? A. Yes, sir, he then went full time with the organization and Mr. Edlin told me that he wanted Mr. Robinson with him at all times to keep him on the track legally, or words to that effect.

Q. Did Mr. Edlin tell you anything else about the relationship between him and Mr. Robinson? A. He told me he looked upon Mr. Robinson as his nephew. He was very fond of him.

Q. Can you tell us whether there was any one person who was the boss or overall supervisor of the operation? A. Mr. Edlin was the governing force throughout.

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[162] By Mr. Weiner:

Q. Mr. Rains, can you tell us whether or not there came a time when you were transferred to Maryland? A. Yes, sir.

Q. When was this? A. May of 1960.

Q. How did that come about? A. The operation was being opened of First Continental Savings and Loan Association at 514 Wisconsin Avenue, Chevy Chase and I was sent out for an estimated period of three weeks to help us in the opening and set up the bookkeeping records and then return to Miami.

Q. Did you stay for just three weeks or did you stay longer? A. No, sir, I stayed over two years.

• • • • • •

[163] Q. Now, can you tell us whether or not, when you came up to Maryland, you assumed any duties with respect to the records of the First Continental Savings and Loan Association? A. Merely those of bookkeeper and accountant.

• • • • • •

Q. Tell us whether or not there came a time when you had occasion to meet Congressman Johnson?

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[164] A. I first met Congressman Johnson in the early summer of 1960.

Q. Under what circumstances did you meet him? A. I went to his office with Mr. Edlin and Mr. Heflin to pick up copies of a speech that had been given in the House by a Representative King, I believe, from California.

Q. You went to Mr. Johnson's office for these? A. Yes.

Q. What, if anything, took place when you got to Congressman Johnson's office? A. We went to lunch at the Congressional Hotel.

(Mr. Doub) Who was with you, did you say?

(The Witness) Mr. Edlin, Mr. Heflin, Congressman Johnson and myself.

By Mr. Weiner:

Q. Can you tell us where Congressman Johnson's office was? A. In the Old House Office Buliding.

Q. Now, what if anything took place at this lunch that you have mentioned? A. All during the lunch Mr. Heflin was describing to Congressman Johnson the plight of the Maryland [165] Independent Savings and Loans and citing the example of the financial condition of the Federal Savings and Loan Insurance Corporation which, in effect, showed that its assets were less than one per cent of its insured liability and, therefore, the independents who might have mortgage insurance, would be a better investment than a Federal Savings and Loan, and also that some Federals had been advertising that their deposits were guaranteed

by the United States Government when, in reality, they were not.

Q. What, if anything, did Mr. Edlin do during this lunch? A. He would make a brief comment which would point out a point to Mr. Heflin to discourse on.

Q. What, if anything, did Congressman Johnson do? A. He listened very attentively. In my opinion, he was hearing the information for the first time. And he asked intelligent questions.

Q. What if anything, did you do? A. I ordered from the waitress. That is about all I said.

Q. Now, can you tell us whether or not anyone—well, what happened at the end of the lunch? A. It was agreed that Mr. Heflin would send Congressman Johnson a synopsis of what they had discussed.

[173] Q. Now, around the time of this storeroom incident that you have related, did you have any occasion to take any airplane rides? A. Yes, sir, this was just before the long 4th of July weekend, those of us who lived in Florida and were working up here went back in a body.

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(The Court) Is this the 4th of July, 1960, or some other year.

(Mr. Weiner) 1960.

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Q. What, if anything, took place during that plane ride? A. Everyone was in good spirits. Mr. Edlin and Mr. Robinson were sitting together and they were showing [174] the speech back and forth and saying, jokingly, or facetiously, "how do you like the speech I wrote," and the other one would say, "What do you mean, you wrote it? I wrote it", and that sort of thing.

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(Vol. 5 [288]) Q. Now, can you tell Mr. Rains, whether you ever had any occasion to be in Congressman Johnson's

office after the first time that you mentioned earlier in your testimony? A. Yes.

Q. When? A. Mid summer 1961.

Q. Tell us about that. A. I was called by Mr. Edlin on the telephone and he stated that the topside had heard the situation with regard to our indictment but they had one question that they wanted to ask. And this related to the First Colony Loan to Albert Cassell. And the question was how could you lend money that you did not have.

The pattern of the loan was that First Colony was to lend Cassell $400,000 approximately, with $150,000 being paid out at the first go-around.

Q. What do you mean by that? A. The entire amount of the $400,000 was not to be paid out immediately. His first draw was to be $150,000.

Q. What was to happen with that $150,000? A. It was a normal payout under the loan to [289] Cassell. Under the loan agreement Cassell was to pay a total of some $300,000 and interest and commissions and Mr. Cassell was to repay the Association $150,000 at the time of the $150,000 payout. And the question was raised, "How could you pay out $150,000 if you did not have $150,000 in your bank account at that time?"

Q. As related to you by Mr. Edlin? A. Yes. And he asked me what was the situation?

Q. The situation of what? A. The cash situation at the time of the payout.

Q. Of what company? A. First Colony Savings and Loan.

Q. What did you do? A. I pulled the bank statement of that period. This was in December of 1958. The bank statement reflected $152,000 in the bank as of the day before the transaction and $152,000 in the bank the day after the transaction. This was to be presented in evidence that sufficient funds were in First Colony to make the payout.

He asked me—Mr. Edlin asked me to make a photostat of the bank statement and at the same time to bundle up some 25 or 30 sales contracts of persons who had purchased [290] lots from Mr. Cassell in his development and that he and Mr. Robinson would be out to pick me up and we were going to take this information to Congressman Johnson's office.

Q. What, if anything happened? A. They picked me up and took the data to Congressman Johnson's office. They went into his office. He was a few minutes late in arriving. When he did arrive, the bank statement was shown to him and the Cassell contracts were shown to him and Mr. Edlin made a statement as to the validity of the Cassell loan and that these contracts were proof that it was a good loan and the bank statement was proof that funds had been on hand to make the initial payout.

Q. Then what happened? A. Congressman Johnson called Congressman Boykin down to the office.

Q. What happened then? A. There was a discussion between Congressman Johnson and Congressman Boykin as to the best approach to Attorney General Robert Kennedy then on behalf of Mr. Edlin and the others under indictment, to have the indictment dismissed. He stated what he intended to say, that Mr. Edlin was an honest man.

[291] Q. Who is "he"? A. Congressman Johnson. That Mr. Edlin was an honest man engaged in an honest effort. He had not intended to defraud anyone and that the indictment should be dismissed.

Q. Was there any conversation as to whether they had been to see the Attorney General before that meeting that you were at? A. I do not recall that. The main conversation was whether or not the two Congressmen would go to see the Attorney General together or separately.

Q. What, if anything, did Mr. Edlin say? A. Mr. Edlin did not say much but toward the end he stated that, words to the effect, "I have had it. How can I do a job on this land development unless you get this monkey off my back?"

Q. I direct your attention to November or December, 1961 and I ask you if you happened to have overheard any conversation between Mr. Edlin and Mr. Robinson? A. Yes, sir.

Q. And what was that conversation? A. This was during a period when the press was lambasting the independent savings and loans and Mr. Edlin was quite concerned about First Continental [291-A] Savings.

(Mr. Doub) When was that?

(Mr. Weiner) Can you tell us about when that was?

(The Witness) It was in the latter part of 1961.

By Mr. Weiner:

Q. Tell us about the conversation. A. Congressman Johnson was overseas and he was anxious to have the Congressman return.

Q. Who was anxious? A. Edlin. I do not know any of the details as to what the Congressman could have done.

Q. What did you hear in this conversation? A. Edlin was quite disturbed and he blurted out, "We have got to get that s.o.b. back here. We have paid him enough money." The "s.o.b." was not said detrimentally, it was just an explosion.

(Mr. Williams) Was not said detrimentally, is that it?

(The Witness) Was not said detrimentally.

(Mr. Doub) Just affectionately.

By Mr. Weiner:

* * * * * *

[294] Q. Do you have any knowledge of any services that Congressman Johnson performed for First Continental or First Colony? A. There were certain papers which were given to me to keep in safe-keeping at the premises in Chevy Chase but I do not know what the papers consisted of or what legal work had been done.

(Mr. Weiner) Your witness.

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[296] CROSS EXAMINATION

By Mr. Doub:

Q. Mr. Rains, you were one of the defendants who was indicted in the mail fraud case and that indictment was returned in November of 1958, was it? A. 1959.

Q. 1959. [297] And your counsel filed in January or February, 1960 a motion to dismiss, did he not? A. I am not sure. I do not recall the technicalities.

Q. Now, as a matter of fact, that indictment was dismissed as to you, was it not? A. Yes, sir.

Q. And on what date was it? A. The indictment was dismissed immediately after Mr. Edlin plead nolo contendere and the indictment was dismissed.

(Mr. Genn) If Your Honor please, I am going to object and I move for a mistrial.

(Mr. Tydings) He certainly has a right to answer the question.

(The Court) As I have said before, there is no possibility of this case being tried without what happened at the end of that case coming in somehow. Now, the Government did not bring it out. Mr. Doub has brought it out by a direct question and I gather Mr. Doub contends he has the right to do that. I will instruct the jury, I will deny your motion for mistrial. Do you wish me to make a statement to the jury along the lines that I offered to make before or do you not wish me to make it? [298] I will make it or not make it as you request as to this.

(Mr. Genn) Your Honor, I have stated what my objection is in a motion and I believe the testimony is inadmissible as to the defendant and anything further at this time would be a waiver of the defendant's rights.

(The Court) All right.

The witness has stated that Mr. Edlin plead nolo contendere to the indictment. The Court instructs you that the outcome of that indictment with respect to Mr. Edlin is not a matter to be considered by you in this case. A plea of nolo contendere is not to be considered by you as an admission of guilt by Mr. Edlin nor as a finding of guilt of Mr. Edlin in that case.

You are further instructed that—of course the fact that the indictment was pending is the basis for the alleged conspiracy in the present indictment so that has to be before you, but the outcome of that case is not to be considered by you as any evidence against Mr. Edlin.

Now, that is the only matter now before me so far as I see.

Mr. Doub brought it out in his statement so I do not see how he has any possible objection. Does either Mr. Boykin or Mr. Robinson wish the Court to give any instructions other than this?

[299] (Mr. Williams) Absolutely none, Your Honor.

(Mr. Robinson) No, Your Honor.

(The Court) You have your exception.

(Mr. Genn) May I have an exception to the ruling.

(The Court) If you will indicate wherein my statement was in error or prejudicial I will be glad to try to correct it. I understand that if you had asked me to make the statement you might have waived your point. I did not want you to waive your point. I did not think that you were entitled to the benefit of what I said. What I said, I tried to make helpful to the defendant if the fact was going to remain and if there was not to be a mistrial.

If you wish to tell me privately or publicly wherein what I have said was prejudicial, I will try to correct it.

(Mr. Genn) Simply, Your Honor, I do not think that any instruction to the jury in the matter could cure what I believe to be the error.

(The Court) I understand that point and I give your exception on that.

(Mr. Doub) Would you read the question back?

(Mr. Weiner) I think he was in the middle of a sentence at that point, Your Honor.

[300] (The Witness) The indictment was dismissed as to James W. Bridges, First Colony Savings and Loan, Rosabelle Edlin and myself.

(Mr. Genn) So the record may be clear, I would like to have a continuing objection along the same lines with reference to the result on the point that I have stated previously and on the grounds previously stated as to this particular point.

(The Court) You can have a continuing objection every time it is mentioned. It is not to be emphasized by anyone in the case because I have said it is irrelevant and immaterial.

By Mr. Doub:

* * * * * *

[302] Q. Right from the first you were talking in terms of getting the government to agree to dismiss that case, were you not? A. Not to these gentlemen, no. It was my hope right from the first. I had no discussions with anyone about it—to clarify that point.

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[309] Q. Now, you have testified, Mr. Rains, to conversations with Mr. Edlin about that pending mail fraud indictment which started back, I think at the end of 1959. It was returned then and you and he used to discuss the problem you had involved in that case frequently, did you not? A. Yes, sir.

Q. It was a matter of great concern, personal concern to you? A. Yes. It was my life.

Q. That is right.

Just as in this case these defendants' lives. Now, you said that Mr. Edlin kept reassuring you about the case? [310] A. Yes, sir.

Q. Do you remember saying that? A. Yes, sir.

Q. And, as a matter of fact, didn't you say, and he say, that the charges did not have a solid, sound foundation? A. Yes, sir.

Q. You have always felt that those charges were unfair and unjust, did you not, as to you? A. Yes, sir.

Q. As a matter of fact, the basic charge was that First Continental had advertised and paid a dividend during the first year of its operation, wasn't that what was particularly involved in that case? A. That was one of the points.

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[311] By Mr. Doub:

Q. And Mr. Edlin took the same position you did, did he not, that he was absolutely innocent, in your conversations and so did the other defendants? A. Yes, sir.

Q. That was the substance of these conversations right from the beginning to the end, was it not? A. Yes, sir.

* * * * * *

[318] Q. Now, you testified in the early summer of 1960 you say some reprints of this speech in the offices of First Continental. Did you ever see bundles of these reprints of this speech unopened and un-used in the offices of First Continental? A. Yes, sir.

* * * * * *

Q. As a matter of fact, isn't it true that thousands of these reprints were never distributed at all? A. Yes, sir.

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[319] Q. When did First Continental start to do business, Mr. Rains? A. In May of 1960.

Q. May of 1960. And at the end of 1960 what, [320] in round figures, was the amount of its deposits? A. It is a guess on my part but I would say about $1 million.

Q. About a million dollars. Say, in June, 1961, what was the amount of deposits or share interest? A. $2 million.

Q. And at the end of 1961 what would you say? A. If you would like me to refer to the general ledger which is an exhibit, I believe I can tell you more specifically.

Q. Go ahead.

(The Witness) It is the small ledger. In December of 1960, the deposits were $1,686,902.96. As of June 30, 1961, deposits were $3,037,102.82.

By Mr. Doub:

Q. All right. Now, at the end of 1961 as of December 31 of that year? A. $2,504,102.10.

Q. You testified that sometime in 1961 in my notes that you brought to Mr. Johnson's office some photostats of some sales contracts of lots with respect to lots involved in the Cassell loan. Do you remember that? A. Yes, sir.

Q. And also a bank statement? A. Yes, sir.

[321] Q. Did not Congressman Johnson say in your presence at that meeting that this information had been requested by the Department of Justice? A. I do not recall that statement.

Q. If Mr. Johnson should say that he did make that statement, would you say it is untrue? A. No, sir. I knew that to be a fact from Mr. Edlin, not from Mr. Johnson.

Q. Oh, you did? A. Yes.

* * * * * *

By Mr. Williams:

Q. I understood you to say in response to a question by Mr. Weiner yesterday that they were discussing an approach? A. Yes, sir.

Q. By that did you mean that they were discussing a first approach or— A. No, the action on the approach was whether they should go together or separately.

Q. And Mr. Johnson had called Mr. Boykin and asked him to come down from his office? A. Yes, sir.

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(Vol. 6 [396]) By Mr. Genn:

Q. Mr. Rains, with reference to the transactions as to the land transactions, you were aware, were you not, that essentially that was a loan transaction in which First Colony and First Continental had a participation agreement? A. That is true of the Charles County loan, yes, sir.

Q. You knew that to be true, did you not, sir, with reference to the land transactions both in Charles County and Leisure City; did you not, sir? A. I don't believe Leisure City was a participation loan between the two associations.

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[398] JOHN E. McKEEVER

a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Marion.

Q. Mr. McKeever, where do you reside? [399] A. I reside at 7219 Delafield Street, Chevy Chase, Maryland.

* * * * * *

Q. At the present time do you hold any position in connection with the First Continental Savings and Loan

Association? A. I am the receiver for First Continental Savings and Loan Association appointed by the Circuit Court for Montgomery County on January 3, 1962.

Q. And as receiver of First Continental Savings and Loan Association what are your duties? A. Under the order of the Court, to gather and protect and to liquidate the assets of the corporation leading to an eventual distribution of funds to the shareholders.

Q. And you have held that position since January 3 of 1962? A. Yes, sir.

Q. You are still acting as receiver at the present time, is that correct? A. Yes.

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[415] SADIE GOLDMAN

a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Tydings:

Q. Were you subpoenaed to appear as a witness in this trial? A. Yes, sir.

Q. Where do you reside? A. 1605 Bay Road, Miami Beach, Florida.

[416] Q. Are you the wife of Mr. Louis Goldman? A. Yes.

Q. Can you tell the jury whether or not there came a time when you were employed by Mr. J. Kenneth Edlin at the First Continental Mortgage Corporation in Miami? A. Yes, I was. I was hired in May of 1959.

Q. In what capacity? A. Secretary to Mr. Bradford Wyckoff.

Q. And at that time will you briefly describe your duties to the ladies and gentlemen of the jury? A. Yes. Mr.

Wyckoff would dictate mail to me in answer to inquiries that came in about First Colony.

Q. About First Colony Savings and Loan Association? A. First Colony Savings and Loan Association, and I would type this mail.

This mail was thereafter brought into Mr. Edlin to be checked back.

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[422] (Mr. Tydings) I think I was very specific, Your [423] Honor. I asked her shortly after she returned from Bethesda, Chevy Chase, Maryland in 1960, did an unusual incident occur.

(The Court) That is all right. It was shortly after she returned in May, 1960. Go ahead. She may testify.

(The Witness) This was about the first week of June of 1960 when Mr. Edlin—this was a very unusual incident. Mr. Edlin came in very happy, sorted the mail and had a running commentary as usual about various things and then he said, out of the clear sky, "Well, I have made a new contact. There is no stopping us now. The sky's the limit. We'll have a chain of banks, Sadie, we are going to be rich."

I looked up at him and he says, "Seriously, Sadie, it is a Congressman." And that was all.

Well, I walked out of his room and Mr. Robinson was sitting in the outer office. There was no one else around and I said to Mr. Robinson—we were friendly—and I said, "Gee, what is he all hopped up about? He is acting like he realized his life's ambition."

Mr. Robinson says, "Better than that."

(Mr. Doub) I did not hear that last.

(Mr. Tydings) I think, if you let the witness [424] finish, you can cross examine.

(Mr. Doub) We cannot hear.

(The Court) The witness asked Robinson "What is he so hopped up about," and Robinson said what I heard—there may have been something in between, "It is better than that."

(The Witness) Did you ever—well, he said, "Did you ever hear of Congressman Johnson?"

I said, "No, I never did."

He said, "You will hear plenty about him now. He is on our pay roll. It is costing Ken plenty."

So, I interrupted. I says "it never costs Ken anything. It always costs the firm."

So Mr. Robinson said, was laughing and he said, "Well, there are no holds barred now. The sky really is the limit, Sadie," and with that he walked—you know, he had a cup of coffee in his hand and he walked to Mr. Edlin's private office.

* * * * * *

Q. Directing your attention back to July of 1960, the period when you were up in Chevy Chase, did you ever have occasion to discuss with Mr. Robinson anything about the pending mail fraud indictment against Mr. Edlin and First Colony Savings and Loan? A. Well, generally, the conversation. Now, I do not know exactly.

[429] Q. Well, the substance of the conversation. A. But the substance of the conversation—

(Mr. Doub) When?

(The Witness) Excuse me.

(The Court) When was it?

(The Witness) When?

(The Court) Yes.

(The Witness) Well, I was in Maryland between May 1 and May 21, and then I was in Maryland again between July 10 and July 29.

(Mr. Doub) 1960?

(The Witness) 1960. It would have had to be either during those periods. I am sorry. I do not remember exactly when.

(Mr. Tydings) All right. Go ahead. Go ahead and tell the jury what happened.

(The Witness) Well, as I said before, Mr. Robinson and I were on a friendly basis and we discussed—I would say, "What happens to our jobs? What happens to us if Mr. Edlin goes to jail—does the place close?"

Well, Mr. Robinson said —

(Mr. Genn) If the Court please, I would like to have an objection to this as a part of the continuing objection I have previously had as to anything in connection [430] with Mr. Edlin.

(The Court) While this is admissible against Mr. Robinson, it is not admissible against Mr. Edlin. If Mr. Robinson said something, I do not see the basis of the objection. You may have an exception to the ruling. Go ahead.

(The Witness) Thank you.

He said, "You have nothing to worry about. The Congressmen are being paid well and Ken will never go to jail. Don't worry."

That was more or less the gist of it. I mean, I do not remember the exact words but that was the gist of our conversation.

(The Court) It is clear that is not admissible against Edlin, to prove a conspiracy or to prove Edlin's part in it. It is admissible against Robinson to prove a conspiracy. And there is no motion by any of the others.

It does not seem to me to be an act in furtherance of the alleged conspiracy.

* * * * * *

(Vol. 7 [437]) (Mr. Genn) As I understood the manner we were to proceed—and I may be in error—I would like to make a motion to strike certain testimony of a specific witness about a conversation which is hearsay to the defendant involved, in this case, Mr. Edlin. I understood that we could make motions to strike with reference to that particular testimony in so far as it is not in furtherance of the conspiracy or to prove the conspiracy. That was my understanding.

Now, I have particular reference to page 424 of the transcript in the testimony of a witness as to alleged discussions with Mr. Robinson and a statement therein alleged to have been made. I simply want the record clear in it has not been by that agreement. That did not occur in the earlier part of the record but most of this type of understanding was in reference to the others because the earlier testimony—

(The Court) Now, what did you want?

[438] (Mr. Genn) I did want to move to strike as far as Mr. Edlin is concerned, that part of the testimony which is outside of the presence of Mr. Edlin. That starts with—

(The Court) I think you had better do that at the end of the case. Isn't that what you want to do, and designate it, because some parts of the testimony—

(Mr. Genn) Speaking only of page 424.

(The Court) If it is some parts of her testimony, what Robinson said about Edlin is not admissible. What she said Robinson said about Edlin is not admissible until it is in some way in furtherance of the conspiracy.

Now, I thought I said somewhere that this was evidence against Robinson of the existence of the conspiracy. But it is not evidence against anyone else as to the existence of the conspiracy.

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[443] CROSS EXAMINATION

By Mr. Doub:

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[453] Q. Do you recall, Mrs. Goldman, that you and your husband had a lengthy meeting with Mr. Mintz of The Washington Post in Miami in December, 1961? A. I recall having the meeting. I cannot place the date, but I recall that.

Q. And Mr. Mintz was a newspaper man, was he not, on the Washington Post? A. Well, Mr. Mintz said he was a newspaper man, but may I interrupt you for one moment. Is that relevant to my testimony in any way?

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[454] Q. How long did your meeting with Mr. Mintz last? A. Quite a while.

Q. As a matter of fact, it lasted fourteen hours, did it not? A. Well, you are a better judge of time than I am, Mr. Doub. I do not know that it lasted fourteen [455] hours. I know it took a long time.

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By Mr. Doub:

Q. What was the purpose of that meeting? A. I do not know. I really honestly do not know whether it had any definite purpose or what you might call a newspaperman, a news hound that knows there is news, that he is on the trail of a bit of news. I do not think it had any other purpose than that. As a good newspaperman, or reporter, I think he smelled something in the air and was trying to get to it.

(Mr. Genn) If the Court please, I am going to object to the characterization. This is more prejudicial testimony. This witness has volunteered [456] matters on every possible moment that she could.

(The Court) Could you read back the answer and tell me what part you want? You know, if each defendant just pro-

vides the other defendant with such opportunities, you would never get any case tried.

(Mr. Genn) Your Honor, this defendant, Mr. Edlin, is entitled to a fair trial and not a witness volunteering, every moment she can, some kind of testimony that is not responsive to the question.

(The Court) This was a very remarkable question that she was asked. Would you read the answer?

(The reporter read part of the answer as follows:

"A. I do not know. I really, honestly do not know"—)

(Mr. Genn) If that is the answer, I object to anything else that follows it.

(The Court) Strike out the rest of it.

Do you object to it being stricken?

(Mr. Doub) No.

* * * * * *

[465] Q. When business was going well, was your boss, Mr. Edlin, an optimistic type? Was he often talking about building this great empire? A. Yes.

Q. He would talk to you about opening new savings and loan associations, would he not? A. Well, he did not only talk to me. He was friendly with everybody. All the employees, and he would mention it to everyone.

Q. He would talk about the fabulous things that were going to be done? A. That we had a future, you know, that the firm had a future. I mean, that is what he probably tried [466] to indicate.

Q. Yes. And he would talk about opening new branches, for example. A. Yes. Along those lines.

Q. Did he talk about establishing new savings and loan associations? A. For the most part, yes.

Q. He would dream his dreams before his private secretary. A. Well, not only before me. Before all of us.

Q. Before others, too? A. It was sort of, as Mr. Edlin used to say, "We are one big happy family." He used to talk that way to everyone. He did not pick just me in particular to confide in me.

Q. He was, would you say, an optimistic type or pessimistic? A. No, I would say he was a very happy, optimistic type.

Q. Yes. What are your sentiments toward Mr. Edlin, do you—

(Mr. Genn) I am going to object to that, if Your Honor please.

(The Court) Sustained, unless you want to [467] come to the bench. And make some proffer of proof on that.

(Mr. Doub) I would like to have a bench conference.

(At the Bench.)

(Mr. Doub) I would like to proffer to show to Your Honor that this witness is not only—this witness is very bitter toward Mr. Edlin and in fact, indeed is not only bitter, but there is enduring hatred there present.

(The Court) She certainly conceals it beautifully.

* * * * * *

[468] (The Court) Mr. Williams, what is your opinion on the subject?

(Mr. Williams) I do not want to get into the cross fire between Mrs. Goldman and Mr. Edlin.

(The Court) I would like to have your opinion on it.

(Mr. Williams) I think, if it adduces the fact that she is biased toward Mr. Edlin, I think it is certainly germane here. I do not know whether she is going to concede she is biased or not, and Mr. Doub may not like the answer he gets.

(The Court) Do you want me to allow it or not?

(Mr. Williams) What are her sentiments toward Mr. Edlin.

(The Court) On this particular question. "What are your sentiments toward Mr. Edlin?"

(Mr. Williams) Your Honor, with respect to the question of law, I think certainly it is admissible but I would hope that Mr. Doub would not ask her the question as a practitioner.

(Mr. Doub) I have great respect for Mr. Williams.

(The Court) Do you withdraw the question under [469] the circumstances? You run a good deal of risk.

(Mr. Doub) No, I think I will have to ask her some things along this line.

(The Court) Ask her something else. That question is perfectly wide open and anything can come out. I think the best thing is to ask some different questions.

(In open court.)

(The Court) Mr. Doub is withdrawing that question and is going to ask another one.

By Mr. Doub:

Q. Mrs. Goldman, you have quoted Mr. Edlin as making several statements yesterday, you quoted him as making several statements to you or in your presence. Based upon your experience as secretary to Mr. Edlin in 1960, did you find his statements to be invariably accurate, which he made to you or in your presence?

(Mr. Genn) If your Honor please, the same objection. This witness' character is not being tried in this case. This defendant's character is—

(The Court) I think I will sustain the objection. I do not remember that she said anything that Mr. Edlin said which is admissible against Mr. Johnson.

[470] Now, all of these statements made by Mr. Edlin, I have indicated you may move to strike because, if they are not admissible against Johnson—Edlin's admissions are not admissible against Johnson as tending to prove a conspiracy or that Johnson entered into it. I do not remember that she had testified to any statement that Mr. Edlin made that could conceivably act in furtherance of the conspiracy, except perhaps making a date at the Eden Roc Hotel. Now, that is the only thing which could possibly, that I can see. The rest of it was admissible only as against Edlin and I do not see that you have any grounds for asking questions that are objectionable to Mr. Edlin's counsel on that ground.

(Mr. Doub) Withdraw it, Your Honor.

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[472] Q. Didn't you mail some copies of a speech by Congressman Cecil King of California? A. Yes, sir.

Q. There were many copies of Congressman King's speech at that office, too, were there not? A. That was very vague in my mind. That is very vague. I know there were copies. I have no idea and I know they were mailed out.

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[473] Q. Have you ever made any derogatory remarks about any of the defendants here? A. I have no reason ever to make derogatory remarks.

Q. Never made any derogatory remarks about Mr. Edlin, for example? A. To whom?

(Mr. Genn) If the Court please, it is the same type of objection.

(The Court) Mr. Doub, what is the point in that?

(Mr. Doub) Very well, I will withdraw it, Your Honor.

• • • • • •

[48?] By Mr. Williams:

Q. In July of 1960 when you heard Mr. Robinson refer

to the Congressman, to whom did you think he was referring to? A. Well, I thought he was referring to Congressman Johnson and Congressman Boykin.

* * * * * *

[506] By Mr. Williams:

Q. Mr. Robinson, Mrs. Goldman, was asking you to fix in point of time a conversation which you said you had with him. Now, was the conversation to which you were referring in your answer the conversations involving the Congressman and Mr. Edlin's going to jail? [507] A. I believe that is the conversation Mr. Robinson referred to. My interpretation of his question, I may be wrong, but that was my interpretation of the question Mr. Robinson had in mind.

Q. That was the conversation in which you said that Mr. Robinson said the "Congressman will never let Mr. Edlin go to jail," in substance?

(Mr. Genn) If the Court please, I have a continuing objection to any reference to this.

(The Court) Let us get this. Before you answer, there is an objection from Mr. Edlin's counsel on this. The question of Mr. Robinson was the date of the conversation with the witness about Congressman Johnson. That is the way it was put. Boykin's name was not mentioned in Mr. Robinson's question.

(Mr. Williams) That is right. I am trying to find out if that is the conversation to which she was referring which she said took place in June of 1960. I understood that she said yes, that is the conversation.

(The Witness) About June.

(The Court) Now, there are no other details to it.

(Mr. Genn) It was the prejudicial nature of the conversation as well as its linking it up with a [508] particular conspiracy.

(The Court) The particular question was withdrawn and not answered. What you call the prejudicial character as to what was said I will strike that out. If it is not already stricken and withdrawn, what Mr. Williams said.

What Mr. Williams says is not evidence and the question is one as reframed, as the Court said. Fixing the date of the conversation with Robinson about Johnson, is the question that Robinson asked and the question that Mr. Williams was trying to clarify.

Now, Mr. Williams' suggestion as to what was said in the conversation was part of the question that was either withdrawn or stricken. All right.

* * * * * *

[514] JACKSON D. RAINS

resumed the stand and testified further as follows:

(The Clerk) Jackson D. Rains.

* * * * * *

[519] CROSS EXAMINATION

By Mr. Genn:

Q. Just to clarify the record, Mr. Rains, yesterday in my examination of you I directed certain questions in reference to the land transactions, and indicated there specifically at page 396 of the transcript, the fact that the land transactions were essentially loan transactions involving a participation agreement of First Colony and First Continental insofar as Charles County and Leisure City were involved, and I believe, sir, you have indicated that was correct as to Charles County, but as to Leisure City you had no recollection, I believe your answer was, of it being a participating loan? A. That is correct.

Q. Do you recall that, sir? A. Yes.

Q. I am simply clarifying the record on this point. You did not mean by that, sir, that it was not a loan transaction,

did you? You meant that you didn't know whether the two savings and loans participated, isn't that correct? A. That is correct.

Q. In other words, it was a loan transaction as to Leisure and Charles, but as to Charles there was participation of the two associations. As to Leisure there was not participation, but just one association? A. That is correct.
[520] Q. Is that statement that I have given you an accurate statement, as you recall it? A. Yes, sir.

(Mr. Genn) No further questions.

* * * * * *

[Tr. 520-551]:

MARTIN HEFLIN

was called as a witness by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

(The Clerk) State your name for the record.

(The Witness) Martin Heflin.

(The Clerk) You will have to speak up, sir.

(The Witness) Martin Heflin.

(The Clerk) Martin Heflin. Take the stand, sir.

DIRECT EXAMINATION

By Mr. Marion:

Q. Where do you reside? A. In Washington.

Q. What is the address? A. 1727 19th Street, Northwest.

Q. As a matter of fact, you are the brother of Van Heflin, the movie star, are you not? A. Thanks for the plug.

Q. Mr. Heflin, what business are you in? A. I have a public relations counseling firm.

Q. And under what name do you practice that business? A. Martin Heflin Associates.

Q. I think if you move the microphone a little closer, your voice will carry.

In connection with your work as a public relations counsel, Mr. Heflin, can you state whether or not there came a time when you met a man by the name of J. Kenneth Edlin? A. Yes.

Q. Can you recall approximately when it was you first met him? A. It was in the fall, I think, around 1958 or the first part of 1959.

Q. And did you have the occasion to do any sort of work for him at that time? A. Yes, at that time.

Q. And approximately how long did your association with him at that time last? A. Oh, I think it lasted about thirty days.

Q. Did there come a time thereafter when you were again contacted by Mr. Edlin? A. Yes.

Q. Can you recall approximately when that was? A. Exactly, I would say about April 1, 1960. I was contacted a day or so before that.

Q. And what was the nature—how did the contact come to you? Was it personal or by telephone? A. Mr. Edlin telephoned me in Washington.

Q. You were in Washington. Do you know where he was? A. In Miami.

Q. What was the nature of the telephone conversation with Mr. Edlin at that time? A. He asked me to come to Miami to confer with him and his associates about a matter concerning independent savings and loan associations. The idea was that they were going to reactivate an Institute of Independent Savings and Loan Associations, That was the gist of the conversation at that time.

Q. Did you agree immediately to go to Miami? A. Not immediately. I think it was the following day I worked it out to come down there, to fly down there.

Q. And did you receive any funds prior to your leaving Washington for Miami? A. Yes. Mr. Edlin sent me a check.

Q. I show you a piece of paper and ask you if you can identify that. Can you identify that? A. Yes.

Q. From whom is that? A. Mr. Edlin.

Q. What is the date of it? A. March 29, 1960.

Q. You received that in Washington? A. Yes.

(Mr. Marion) The Government wishes to offer this in evidence and show it to defense counsel.

(Mr. Williams) We have no objection to it.

(Mr. Marion) The Government offers this into evidence.

(The Clerk) The letter dated March 29, 1960, Government exhibit 53 marked in evidence.

(Government exhibit 53 received in evidence.)

(Mr. Marion) Members of the Jury, this is a letter on the letterhead of Mr. J. Kenneth Edlin dated March 29, 1960, addressed to Mr. Martin Heflin, 27 19th Street, Northwest, Washington 9, D. C.

"Dear Martin:

"Enclosed is a check for $500 on account. Bradford Wyckoff is looking forward to meeting with you on Friday and needless to say, I am also. Wire flight number and Airline you are taking and we will meet you at the airport.

J. Kenneth Edlin."

Signed "Ken."

By Mr. Marion:

Q. I think you indicated there was a check enclosed with that letter. A. Yes.

Q. Upon receipt of that check and that letter, did you make arrangements to go to Miami? A. Yes.

Q. Do you recall what date you went to Miami? A. It was the first of April, 1960.

Q. Did you meet—who did you meet when you arrived in Miami? A. I went to the office of First Continental Mortgage Company.

Q. First Continental Mortgage Corporation? A. Yes.

Q. And with whom did you talk there? A. Mr. Edlin, his associates. I had just met the rest of these people, for the most part, for the first time.

Q. And what was the nature of the discussion if any at that time with Mr. Edlin? A. There was a discussion with everybody around the table as to the reactivation of this savings and loan institute of independents and it was a fairly brief meeting then. I went over to the hotel and checked in in about an hour.

(The Court) Can the jury hear? I do not think counsel can hear what you say. If you would speak into this microphone.

(The Witness) All right, sir.

By Mr. Marion:

Q. Did you have any further discussion with Mr. Edlin or with anyone else while you were in Miami? A. Oh, yes, we had a meeting every day. I was only there, I think, two days.

Q. Was anyone else present with Mr. Edlin at any of those meetings? A. Yes, the whole group, Mr. Wyckoff, Mr. Robinson, Mr. Rains. As I recall, and a big tall fellow.

Q. Mr. Leier. A. Mr. Leier was there.

Q. And again what was the substance of those conversations? A. It was about the reactivation of this savings and loan institute. There seemed to be considerable apprehension on Mr. Edlin's part that something should be done to defend the independent savings and loan associations and project them in the public mind in a more favorable light than they had been shown up to then and there was legislation pending as I understood and was given to understand in the Maryland legislature with respect to regulating the independent savings and loans.

Q. And, according to those discussions, what, if anything, was to be your position or your function with regard to the Institute? A. I was to act as—take them on as another client, and advise them with respect to public relations. Their contact with the press and other means of communication. It was largely a matter of pulling together this institute on a basis of presenting some kind of a front, some sort of a united front. That was the idea. In other words, doing a public relations job for the Institute.

Q. What inquiry, if any, did you make about the size of the Institute or the number of its members. A. Well, I asked about—I was given to understand that such an Institute did exist. That it had been inexistence since 1958. I later had checked that from Washington and it had been incorporated in the District of Columbia in 1958. I was given to understand that they had a number of members, considerable number. Dozens or fifty or a great many members.

(Mr. Genn) If the Court please, I am going to object to what he was given to understand. The question would be what was told by anyone of the defendants and not by what he was given to understand by some hearsay testimony from some other source.

(Mr. Marion) That is my next question.

(The Court) If it was in the conference with Mr. Edlin and Mr. Robinson, with Mr. Edlin's juniors in the group

present I would say that whatever was stated at the conference would be admissible unless you have some authority to the contrary.

(Mr. Genn) Well, when one person says "I was given to understand something," that is not stating what he was stating.

(The Court) I think it is a proper objection to say what he means. What do you mean, you were given to understand? Do you mean somebody there said something or you picked it up somewhere else?

(The Witness) I specifically asked.

By Mr. Marion:

Q. Who gave you to understand this in that conversation? A. Well, Mr. Edlin, Mr. Robinson, there was general agreement by these gentlemen that there were a good many members of this Institute.

Q. Did you at any time thereafter learn exactly how many members of the Institute there were in April of 1960? A. After I had started, actually started to work on it, you mean?

Q. Yes. A. Well, I found out very shortly that there were not but two members actually.

Q. What two members were they? A. The two associations, First Colony and First Continental.

Q. At the time you went to Miami in early April of 1960, do you know whether or not the Institute had any office? A. I did not know whether they did when I went down there.

Q. Did you later learn whether or not they at that time had an office? A. No, they did not have an office at that time. I understand that there was no office then. I did understand there had been one. Somebody, who ever it was, had charge of the affairs of the Institute before may have one but they did not have one at the time.

Q. All right, now, was there an office obtained for the Institute? A. Yes, an office was opened.

Q. And where was that? A. At 1025 Connecticut.

Q. What permanent staff if any did the Institute have? A. They had no permanent staff there.

Q. What did they do about telephone service? A. They had an answering service and then there was a receptionist and a secretary in this office. There were a number of officers and manufacturers' representatives and other people who each had one room in this general office. There was a receptionist and secretary that took care of telephone calls and such as that.

Q. This was under some sort of arrangement sharing this employee with these other offices? A. Yes, sir.

Q. Were you ever in the office of the Institute thereafter? A. Oh, yes.

Q. How often did you go there? A. Sometimes once a week; sometimes three time a week. There never was any—this was not as I say, a full time job. The Institute was another client of mine. I would go into the Institute when something specific was to be done or to see if there was any mail in response to inquiries that I may have made with the press or magazines or something of that nature.

Q. What, if anything, did you do with mail which was addressed to the Institute at that office? A. Well, if it was something concerning public relations, the press or something like that, I would open it and take charge of that. Otherwise I would forward the mail to Mr. Robinson.

Q. Where would you forward it to Mr. Robinson? A. At First Continental.

Q. Who was the nominal head of the Institute at that time? A. Mr. Robinson was the trustee-director of the Institute.

Q. And from whom, if anyone, did you obtain your instructions and your orders in connection with the work you did? A. Well, normally, from Mr. Robinson. He was the boss. And the head of the Institute.

Q. With whom did you discuss the affairs of the Institute from time to time? A. With Mr. Robinson and Mr. Edlin.

Q. Now, when you first were retained to act as public relations counsel for the institute, what was the nature of your duty or duties, what generally did you do at that time? A. Largely there was a period of time when this whole situation had to be studied. I tried to familiarize myself with the savings and loan picture. There was quite a bit to be studied and digested and to try to hit upon some means of public relations. Very soon it developed as, far as the Institute was concerned, there was not very much you could say at that time.

Q. Were any letters sent out from the Institute? A. Oh, yes, there were letters of solicitation for members.

Q. What, if anything, did you have to do with those letters? A. Nothing except I would edit. I always saw the letters. I would edit them and make suggestions for material to be included in them.

Q. Who prepared the letters initially, if you know. A. Well, it was a toss-up between usually Mr. Robinson and myself. There would be drafts of letters and so forth. I would look at them and finally the final copy would be decided upon. This was in a solicitation to get new members for the Institute. And this would be done.

Q. Did you have any arrangement with either Mr. Edlin or Mr. Robinson about how you should bill for your services? A. Yes, initially, I did.

Q. And what was the nature of that discussion? A. Well, I was to work for the Institute so I billed the Institute. The first billing was to the Independent.

Q. Directly to the Institute. A. Yes.

Q. What, if anything happened to that bill? A. I was told not to bill that way but to bill the Institutions separately.

Q. Which institutions? A. That was First Colony and First Continental and one other land development company.

Q. Do you remember the name of the land development company? A. Yes.

Q. This Cassell Land Development Co.? A. Yes.

Q. In other words, you split your bill three ways? A. Yes.

Q. To what address did you send those three bills? A. To First Continental.

Q. 5410 Wisconsin Avenue? A. Yes, to Mr. Robinson.

Q. Now, directing your attention to the month of April, late April of 1960, will you state whether or not you had occasion to discuss with any of these defendants at that time a speech? A. Yes.

Q. With whom did you first discuss a speech? A. With, I believe it was Mr. Robinson.

Q. Do you recall where that discussion took place? A. At the Statler Hotel, I believe.

Q. Do you recall who was present? A. Mr. Robinson—Mr. Edlin and I think he had left that day, and later Mr. Robinson and I continued our discussion in his room, I believe it was.

Q. What, if anything, was said at that time about his speech? A. Well, Mr. Edlin and Mr. Robinson suggested that it would be a good idea for a speech to be made. Of course, I agreed.

(Mr. Doub) May I interrupt. When was this?

(The Witness) In the latter part of April as I recall, 1960.

By Mr. Marion:

Q. Was anything said to you at that time as to who was to make the speech or as to where the speech was to be made? A. Nothing was said as to who. It was simply a speech to be made in the Congress at that time. That was my understanding.

Q. Did you at any time thereafter, or soon thereafter learn whether it was to be made in the House of Representatives or the Senate? A. I gathered that it was to be made in the House at that time. That was my recollection.

Q. Now, what exactly happened in the hotel room with Mr. Robinson, what was said or discussed or done at that time in that meeting with Mr. Robinson? A. Where?

Q. At the Statler. A. At that time?

Q. Yes. A. Mr. Robinson began to dictate a speech into the Dictaphone. He said a speech—something along these lines and I believe that on that time, he talked for a half hour or so and then decided that he would finish the speech or finish the draft of it when he got to Miami.

I believe he was leaving if I am not mistaken.

Q. Do you recall the substance of the half an hour of dictation of Mr. Robinson at that time? A. What?

Q. Do you recall the substance of that?

(Mr. Doub) Wait a minute. He did not say he dictated for 30 minutes. He said the meeting was for a half hour as I understood it.

By Mr. Marion:

Q. Did you say the meeting in the room was for a half hour or did he dictate for a half hour? A. Both, that was about it.

Q. What was the substance of the material which he dictated, if you can remember? A. Well, it was just sort of a replay of everything that had been discussed about the abuses of the independent savings and loan associations by the Federal Savings and Loan League or by the legislatures in Maryland and by various other detractors of the independent savings and loan industry.

It was pretty much just a re-hash of everything that had been discussed about that.

Q. Had you heard this general conversation before? A. Many times.

Q. From whom? A. Mr. Edlin, Mr. Robinson.

Q. Now, you say when Mr. Robinson finished, he indicated that he would send you a draft? A. Yes.

Q. Did you thereafter receive a draft? A. I received several of them.

Q. I show you what purports to be a letter and several papers attached and ask if you can identify that. A. Yes, sir.

Q. From whom did you receive that? A. Mr. Robinson.

Q. When is the letter dated? A. May 3, 1960.

Q. What is attached? A. It is a draft of a speech.

Q. What is the date on that? A. May 2nd, 1960.

Q. All right.

(Mr. Marion) I would like to offer this into evidence.

(The Clerk) Government exhibit 54 marked in evidence.

(Government exhibit 54 is marked in evidence.)

(Mr. Marion) Members of the Jury, this is a letter on the stationery of W. L. Robinson, Attorney-At-Law, Miami, Florida, dated May 3, 1960 addressed to Mr. Martin Heflin, 1727 - 19th Street, Northwest, Washington 9, D. C.

"Dear Martin:

"I enclose herewith copy of the preliminary speech draft which you patiently listened to in my room. No corrections have been made. I leave that in your most able hands.

"Highest regards to you and your lovely wife.
"Very truly yours,

W. L. Robinson."

A notation in the lower left indicates "Enclosure."

There was an envelope here which indicated that the letter was mailed by air mail, post-marked May 3, 1960, 9:30 a.m. and the enclosure is dated May 2, 1960 consisting of several typewritten pages labeled "From W. L. Robinson to Martin B. Heflin, Re proposed speech Re Institute Savings and Loan Industry."

I will not read the entire proposed draft at this time but we will exhibit it to the jury in a moment.

(The Court) Did it come to him in just a clean type or were there corrections on it?

Did it come that way or who made them?

By Mr. Marion:

Q. Mr. Heflin, when that draft arrived in your possession, was it just as originally typed without any penciled corrections? A. Yes.

Q. Who made the corrections on that draft? A. I did.

Q. I notice that in several instances throughout the body of that there is a notation included which says "Mr. Speaker," at appropriate points. Who included that in the draft? A. I did.

Q. What, if anything, did that indicate to you about by whom the speech would be made? A. Well, it would be made in the House of Representatives obviously. Other-

wise it would have been "Mr. President" if it had been the Senate.

Q. Now, I think, Mr. Heflin, when you first answered my question, about a draft or drafts of the speech, you said you received several drafts. A. Yes.

Q. Did there come a time later when you received additional drafts of a proposed speech? A. Yes.

There were several. I do not know how many. There was more than one.

Q. From whom did you receive those drafts? A. Mr. Robinson.

Q. What, if anything, did you do with those drafts? A. Some of them I edited and sent back to him and I guess I returned all of them to Mr. Robinson and we discussed them.

Q. What, if anything, concerned you about the timing at that time of this particular proposed speech? A. You say the timing?

Q. Yes. Was there any problem which you discussed with Mr. Robinson and Mr. Edlin or both? A. As to timing.

Q. As to the delivery of such a speech at that time? A. Oh, yes. By and large it was that it was not a speech.

(Mr. Doub) I did not understand that. Would you read the answer back?

(The record was read.)

By Mr. Marion:

Q. What do you mean by that? A. I mean there was not enough material, or there was not enough reason, rhyme or reason in this material to justify a speech.

Q. What, if anything, was your complaint to Mr. Robinson and Mr. Edlin about it? A. There was no timeliness in it. There was no reason to make the speech. This ma-

terial merely rehashed and recited these various abuses alleged or otherwise and it was not the sort of thing that I felt anyone could be justified in making a speech. There just was not a speech there.

Q. Nothing to hang your hat on? A. Yes, nothing to hang your hat on.

Q. Did there subsequently come to your attention anything which you felt might be something to hang your hat on? A. Yes. That was some weeks later. This newspaper story in the Washington Star.

Q. Before we get to that then, Mr. Heflin, let me ask you this. Did there come a time when you had occasion to meet Congressman Johnson? A. Yes, I met him.

Q. Do you recall approximately when that was. A. It was—it must have been in May. The first time I met Congressman Johnson was at luncheon and that was in May as near I can recall, April or May. I was a little hazy about that but I believe it was May as nearly as I can remember.

Q. Now, did you first go to Congressman Johnson's office? A. Yes, with Mr. Edlin and another gentleman—one of our associates, for a few moments and then we went to this hotel luncheon.

Q. What was the purpose of going with Mr. Edlin to Congressman Johnson's office as you understood from Mr. Edlin at that time? A. Merely to pick up the Congressman and go to lunch with him.

Q. Did he go immediately with you to lunch? A. No, he was detained. He was entertaining some constituents for lunch and he did not join this group until later. A few minutes later.

Q. Where was this lunch? A. At the Congressional Hotel.

Q. And you were there, I assume, for what purpose or in what capacity? A. Well, I was there as a public relations counsel of this Institute.

Q. What discussion if any was there at lunch pertaining to the Institute or to independent savings and loan associations generally? A. Well, this same discussion really, relative to abuses of the savings and loan industry and so forth.

Q. Go ahead. A. My contribution was merely confirming that, I felt that way, myself. I felt that there had been injustices done to independents and mine was more or less a saying "Yes" or corroborating this discussion.

Q. And you say Congressman Johnson was present at that time? A. Yes.

Q. What role did he play? A listener or a talker? A. He was listening.

(Mr. Doub) What was the answer?

(Answer read.)

By Mr. Marion:

Q. How, if at all, did that general discussion compare with the draft or drafts of the proposed speech which you had seen up to that time? A. It was pretty much a rehash of that, too. I mean, there was not very much that could be added to that. The draft or drafts of this material that I had received from Mr. Robinson pretty much said it all. It enumerated these various abuses and things of that sort and it was merely as I gathered it, to point out to Mr. Johnson then that the savings and loan industry in Maryland, the independents, were being jeopardized categorically and that it was not the right thing to do.

Q. Now, I think you indicated a while earlier that you discovered on May 27 the article in the Evening Star, right? A. Yes.

Q. Do you recall who, if anyone, was with you at that time? A. Yes, I recall it was Mr. Edlin and Mr. Robinson the afternoon the story broke—that it came out.

Q. Do you recall whether or not the article was brought to their attention at that time? A. Oh, yes, I brought it to their attention.

Q. I show you a photostatic copy of what purports to be a newspaper page and ask you if you can identify that? A. Yes.

Q. Do you recall the page or section of the paper in which that article was located? A. It says Section D, page 8.

Q. That would be the fourth section, page 8 of the Fourth Section of the Evening Star? A. Yes.

(The Court) Do you have any other copies of it, Mr. Marion?

(Mr. Marion) We just obtained the one photostat of that page which I think is from microfilm.

(Mr. Genn) Are you offering this in evidence.

(Mr. Marion) I propose to offer that, yes.

(Mr. Genn) I take it, it is not being offered for the truth of the facts stated but simply as some factor in the statement made in reference to a particular article but not for the truth or falsity of those statements.

(Mr. Marion) I think that is correct.

(The Court) Is that understood, Mr. Marion?

(Mr. Marion) Yes.

(The Court) The jury understands the purpose for which this is being offered.

(The Clerk) Government No. 55 marked in evidence.

(Government exhibit 55 is marked in evidence.)

By Mr. Marion:

Q. Just so we know specifically what we are talking about, Mr. Heflin, you were referring to the article in the upper lefthand corner of that page. A. Yes, that is right.

Q. Now, Mr. Heflin—

(The Court) I understand the statements in the article are not evidence in this case. It is just the fact that it appeared as the basis for what further testimony is given.

(Mr. Tydings) But the article is evidence. It is mentioned in the indictment.

(The Court) The article is in evidence but any statements in the article are not evidence of facts in the case.

(Mr. Tydings) Just that the article appeared.

(The Court) Yes. The witness' testimony that he brought it to the attention of Mr. Edlin and Mr. Robinson.

By Mr. Marion:

Q. After you discovered that article and brought it to the attention of Mr. Edlin and Mr. Robinson, can you state whether or not you had any occasion to meet Congressman Johnson again? A. It was some time after that.

Q. You did meet him for the second time? A. Yes.

Q. Where did you meet him on that occasion? A. In his office, I met there with Mr. Robinson.

Q. Were you and Mr. Robinson alone when you went to his office on that occasion A. Yes. Just he and I.

Q. What, if anything, did Mr. Robinson have with him then? A. He had a draft of this article, of course. It had been published for some time. I do not know how long.

Q. He had a draft? A. Yes. A draft of a speech.

Q. And he had a copy or copies of this article? A. Yes.

Now, when I say "copies of a speech" it was material you understand. Material for a speech along with this. And that was shown to Mr. Johnson. This article was as first evidence of the mistreatment of independent savings and loan associations.

Q. What, if anything, was discussed between you and Mr. Robinson and Congressman Johnson? A. Well, just what I said. The fact that this piece had categorically said that all Maryland Savings and Loan Associations were phonies and I thought from the standpoint of a one-time newspaperman, that it was categorically unfair. I still think so. The story is another thing, of course, it went on and was more specific than that headline but the headline is the thing that it was, what you call a "Scare" headline and I pointed this out to Mr. Johnson and so forth.

Q. Did you know then that Congressman Johnson was to make a speech? A. I did not know it until that time. At that time I inferred that otherwise it would be wasting his time to be there. I understood prior to going out there, whether it was that day or two or three days before, I do not recall, but I understood that Congressman Johnson was going to defend this industry in the State of Maryland.

Q. What, if anything, did Congressman Johnson do with the material which Mr. Robinson brought in and gave to him? A. As I recall, Mr. Johnson said that his administrative assistant, Mr. Buarque—

Q. Is that Mr. Manuel Buarque? A. Yes.—would go over the material, too and if I am not mistaken, Mr. Johnson called him in and Buarque took the material and I left the office with Mr. Buarque to discuss it some more.

Q. What happened to Mr. Robinson when you left with Mr. Buarque? A. He stayed with Mr. Johnson a few moments and then came out and we left.

Q. After that meeting did you at any time thereafter have any contact either with Congressman Johnson or his office with regard to the speech? A. I telephoned a time or two there and I think I was called by Mr. Buarque and asked him about certain figures that the Institute—background material that might be supplied, and I did supply additional material and I believe Mr. Buarque sent me

a draft, himself, with certain places, blank places for figures to be filled in. We had a discussion about some of the technical phases and information, statistical information and so forth.

Q. You supplied some of the facts and figures for the draft that Mr. Buarque sent you? A. Yes.

Q. What did you do with that draft once you had looked it over? A. Returned it.

Q. To Mr. Buarque. A. Yes. I do not recall whether I mailed it out there or dropped it off but I returned it to him.

Q. How long, Mr. Heflin, did you continue to act as public relations counsel for the Institute? A. I think it was until about the end of December. No, the latter part of January, I think it was or the first of February of 1961.

Q. Until when? A. Until February or, late January or the first part of February of 1961.

Q. Mr. Heflin, did you after the last time you saw a draft of the proposed speech, did you thereafter learn whether or not the speech had been given? A. Yes, I learned about it three days after. Two or three days after it was given.

Q. And did you have occasion to read the speech at that time? A. Yes.

Q. Did you have occasion to prepare any press releases based on that speech? A. Yes.

Q. To whom were those sent? A. They were sent to some trade papers, bankers, newspapers and magazines. One to the American Bankers.

I think that was the only one that was printed.

Q. To the American Bankers? A. Yes.

Q. I show you a copy of page 2 of the American Bankers of July 13, 1960 and ask you if you can identify that? A. Yes.

Q. Who prepared that article? A. I did. I wrote the release. It had been edited down.

(Mr. Marion) I propose to offer this.

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By Mr. Marion:

[Tr. 553-554]:

Q. In what capacity did you prepare that press release? A. As public relations counsel for the Institute.

Q. And at that time who was your boss in the Institute? A. Mr. Robinson.

Q. State whether or not that was prepared under his general supervision and direction? A. Of course it was. Anything that was done under his direction and supervision.

(Mr. Marion) I offer it in evidence.

(The Court) Did he see it or a draft of it?

(The Witness) I think so. It was just a release. It was sent out to the press gallery and frequently on some speeches, there are no releases prepared and in others it has to be called to the attention of the press. In the City of Washington, there are probably four thousand press releases ground out a day about one thing or another.

(Mr. Marion) We offer it now, Your Honor.

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[Tr. 556-577]:

By Mr. Marion:

Q. Mr. Heflin, I show you Government Exhibit 35 and ask you if you can identify therein any of the bills which are contained along with copies of various check vouchers. A. Yes, these are statements that I rendered.

Q. Those bills are directed specifically to what association? A. First Continental Savings and Loan.

Q. And the amount of your retainer fee which is included on each of those bills as I understood it is only a pro rata portion of your total monthly bill, right? A. Yes. There were three statements, this is one of the three.

Q. You have included on several of those bills which you rendered to First Continental certain expenses which you incurred in connection with your employment or your relationship with them? A. Yes.

Q. Look particularly at the first one in the folder, I think apparently by the date, it is the first bill rendered and indicates the date of your plane trip to Miami, does it not? A. Yes.

Q. April 1. A. April 1.

Q. And the third bill in there as I recall for the—rendered for I suppose—well, in June, has certain expenditures attached and memorandum from you summarizing those expenditures, does it not? A. Yes.

Q. And included among those expenditures is a reference to certain speeches of Congressman King? A. Yes.

Q. Under what circumstances did you obtain reprints of a speech by Congressman King? A. I was asked to call the Congressman's office and get some copies of the speech.

Q. By whom were you asked to do that? A. Mr. Robinson, I am sure.

Q. What is the date on which that speech was delivered or on which you sought to get those reprints? A. This says "King Speeches—Congressional Record, May 19, 1960." I do not know whether that was the date the speech was made I presume it is, the May 19 Congressional Record.

Q. Now, Mr. Heflin, at any time while you were engaged as public relations counsel for the Institute of Independent Savings and Loan Associations, did you have occasion to meet Congressman Boykin while in the company of Mr.

Edlin? A. Not directly in the company of. One afternoon I think, yes, I had had lunch with Mr. Edlin and I stepped out on the sidewalk in front of the Mayflower Hotel and saw Mr. Boykin, and said "Hello, Uncle Frank," I think. Everyone calls him "Uncle Frank," and I do, too. It is a little familiarity—

Q. Was Mr. Edlin with you at the time? A. No, he came out a few moments later. He had gone, I think he was telephoning or something, and he came out and the three of us stood there and visited for a moment and I left and Mr. Edlin left and Mr. Boykin left all separately.

Q. Could you tell whether or not at that time Mr. Edlin and Mr. Boykin knew each other? A. Oh, yes, they apparently knew each other. They said "Hello." They shook hands and said "Hello" as I did.

Q. And can you recall approximately when that instant occurred with relation to the speech of June 30, 1960? A. It was before—I am very hazy about that because it was such an offhand chance meeting.

Q. All right, now, also during the period of time when you were engaged in your work for the Institute, did you ever have occasion to discuss with Mr. Edlin an indictment which was then pending against him or did he have occasion to discuss it with you? A. It was mentioned. He mentioned it to me several times.

Q. Do you recall the substance of what was mentioned on those occasions? A. Well, that he was not very worried about it, I gathered from the conversation.

Q. Did he give you any reason why, in those conversations, he was not worried? A. Well, merely to say that he had friends on the "Hill" without mentioning any names.

Q. Did he indicate any further in substance what these friends on the "Hill," how they related to the indictment? A. No, not as to how they were related to the indictment. Except that he had friends on the "Hill". The implication was very clear.

Q. I am sorry. A. The implication was that he was—

(Mr. Genn) I am going to object to the "implication."

(The Court) Strike "The implication."

(Mr. Marion) All right.

By Mr. Marion:

Q. Give us the substance as best you can recall.

(The Court) If he did say anything about the implication, strike that.

(Mr. Marion) I do not think he got further than that.

(Mr. Doub) I object to the last question, Your Honor, because the witness has answered it twice, I think and he is now being asked it a third time.

(The Court) What is the question?

(Mr. Marion) I just asked him again to give me the substance of what was said. He started to go into implication.

(The Court) He was interrupted in the middle of his answer by Mr. Genn's objection.

Now, had you finished testifying to what Mr. Edlin said as distinguished from what you understood or implied?

(The Witness) My answer was simply that Mr. Edlin, No. 1, conveyed the impression to me that they were not—that he was not worried.

(The Court) We do not want impressions conveyed. You can tell us—

(The Witness) I could not tell you what verbatim Mr. Edlin said.

By Mr. Marion:

Q. I am asking you what, in substance he said to you on any of these occasions. A. That he was not worried about

the indictment because he had friends on the "Hill." That is substantially what it was.

(Mr. Marion) The Government has no further questions.

CROSS EXAMINATION

By Mr. Doub:

Q. When you spent two days in April in Miami at Mr. Edlin's request and you discussed reactivating or activating this savings and loan association, was Mr. Edlin very enthusiastic about his possibilities—the institute's possibilities? A. Yes.

Q. And he expressed the view it might develop into an association with hundred of members? A. Yes.

Q. And, as a matter of fact, didn't he express the hope that it would have representation in all the states of the country? A. Yes.

Q. Now, when you became public relations counsel to this Institute, I believe you said in March of 1960? A. No, it was in April.

Q. In April, 1960, you had business cards printed, did you? A. Business cards?

Q. Yes, a business card that showed on the card the name of the institute, the National Independent Savings and Loan Institute and then down in the lefthand corner was your name "Public Relations." A. I do not recall.

Q. You do not remember that. A. No.

Q. As a matter of fact, don't you remember, Mr. Heflin, giving Mr. Johnson one of those cards? A. No, not such a card. I do not think I ever saw such a card.

Q. You did not? A. The only thing I know that was printed was letterheads for the Institute.

Q. Letterheads were printed. A. That is all that I know of.

Q. Now, the exact name was National Independent Savings and Loan Institute, was it not? A. No. I believe it was the Institute of Independent Savings and Loan Associations.

Q. That was it, yes, sir. A. No, that had no National in it.

Q. Did that Institute issue monthly bulletins? A. No, sir.

Q. Did it issue some bulletins? A. I do not know what you mean by "bulletins". The only thing that you might characterize as a bulletin with that concern were the letters of solicitation for memberships.

Q. And they were written on the printed letterhead of the Institute? A. Yes, sir.

Q. Now, you mentioned having lunch at the Congressional Hotel with Mr. Edlin and you said you were joined there by Mr. Johnson? A. Yes, sir.

Q. I think you said before going to lunch there you and Mr. Edlin went by Mr. Johnson's office. A. Yes.

Q. Who else was with you? A. As I recall at the time, I thought it was Mr. Robinson. As I think back now, it could have been Mr. Robinson or Mr. Rains or anyone, or even Mr. Wyckoff or someone associated with the group. I know there was a third party there.

Q. How about Mr. Marshall Diggs? A. Yes, I believe Mr. Diggs was there. He was at the luncheon at the table. I am fairly certain he joined the luncheon group. As I remember, he did not go to Mr. Johnson's office with Mr. Edlin and the third man and myself.

Q. Who did you understand Mr. Diggs was, who—were you introduced to him? A. I knew him.

Q. You knew him? A. I have known him for a good many years around Washington, not well at all. I have met him on one or two occasions.

Q. He is a prominent lawyer of Washington? A. Yes.

Q. Wasn't the reason that you and Mr. Edlin went by Mr. Johnson's office, was it not to pick up copies of the King Speech? The speech by Congressman King. A. I do not recall that that was the reason.

Q. I think Mr. Rains, if any recollection is correct, said that yesterday. A. I do not know how or why that would be. I am just trying to think in my own mind why we would go to Mr. Johnson's office to pick up the King speeches. I do not connect that at all. I cannot see any reason for it.

Q. Well, as a matter of fact, when Mr. Johnson came in and joined you all in that lunch at the Congressional Hotel, wasn't that the first time that you met Mr. Johnson? A. Yes, sir.

Q. And you were introduced to him as the public relation man for this institute, were you not? A. Yes.

Q. Then, didn't you and Mr. Edlin tell Mr. Johnson how unfairly this industry of savings and loan associations was being treated? A. Yes.

Q. As a matter of fact, that was the principal subject of conversation at that luncheon, was it not? A. It took a great portion of the time I would say. Other things were discussed.

Q. That is right, and among them didn't Mr. Johnson talk to Mr. Marshall Diggs and Mr. Edlin about this Assateague Island Bridge project? A. We talked about the bridge or bridges. I have not the faintest idea what the Assateague bridge was or anything about it.

Q. Can you locate the date of that lunch in terms of the article published in the Star on May 27, 1960. Do you know whether it was before or after that? A. I would say it was before. I could not remember the exact date.

Q. Didn't Mr. Johnson ask you about the Institute which you told him you were connected with and did not you reply

that it is a national organization with offices in Washington. You told him that, did you not? A. Yes. We had offices in Washington but whether I at that time said it was a National organization, I do not know. As you suggested, yourself, we had hopes of being a national organization.

Q. Didn't Mr. Johnson then ask you how many members you had and you said only a few now, but you hoped to have a representative membership from all over the whole country. A. That was the hope. I did not specify any number because I did not know myself.

Q. That is right. Didn't you tell Mr. Johnson that you would like to come by to see him some time at his office? A. I do not remember that.

Q. Was there any reference to Mr. Johnson making a speech at that lunch?. A. There may have been because it would seem logical that there would have been. Otherwise we would not be taking up the Congressman's time to bend his ear about the abuses of savings and loan institutions for any other reason.

Q. Well, it could have been a hope that he might? A. Yes, I would say so.

Q. You all might have hoped he might make one at that time? A. I presume so, yes.

Q. Now, how long after that was it that you did go to Mr. Johnson's office? A. What is that?

Q. How long after that lunch was it that you did go to Mr. Johnson's office with or without Mr. Robinson? A. I do not know when the lunch was; so I could not tell you how long after that. It was a matter of I would think a couple of weeks or maybe three weeks.

At any rate it was after the publication of this Washington Star story.

Q. That is right. And when you went to Mr. Johnson's office, did you tell him about the Star article and discuss it with him? A. I think Mr. Johnson knew about it at the

time or his assistant at the time knew about it. There was no reason why it should not be known. It was published in the Washington Star, a lead story of the financial page. And whether I was calling attention to something that was not already known, I do not know. But certainly the story did call his attention to it, yes.

Q. You never had any conversations with Mr. Johnson personally about drafts of this speech, did you? A. Not that I recall, no.

Q. No, you did discuss it with his administrative assistant Mr. Buarque? A. Yes. Let me correct myself there. I did discuss it in a general way, the speech and the article at the time I went to Mr. Johnson's office with Mr. Robinson.

Q. Yes. A. I did that.

Q. And then Mr. Johnson referred you to his administrative assistant, Mr. Buarque, did he not? A. Yes.

Q. You were not asked by the United States Attorney anything about these reprints of the speech. As a matter of fact, the Institute ordered those reprints through Mr. Buarque, did they not? A. Well, the reprints. You mean of the Johnson speech?

Q. Yes. A. Well, I assume so. I do not think I, personally ordered them.

Q. Well, were they delivered at the address of the Institute? A. No, they were delivered to First Continental as I recall. We got some copies. Quite a considerable number.

Q. As a matter of fact, did you not, or someone else in the office of the Institute order those through Mr. Buarque? A. Well, they were ordered. Now, whether I directly placed the order for the number of copies, I just do not remember.

Q. You are not clear? A. They were ordered through the Institute, yes.

Q. That is right. Didn't Mr. Buarque say when they

were ordered, "Sure, but we are not going to pay for them; anybody who wants that speech must pay for it"? A. Certainly, that would be.

Q. Yes, now, Mr. Heflin, you know of no payments of money directly or indirectly ever made to Mr. Johnson with respect to that speech, do you? A. No.

Q. You never heard Mr. Edlin or Mr. Robinson or anyone else in that organization mention such a thing, did you? A. No, not in so many words; no, I never heard any reference to Mr. Johnson receiving money.

Q. Well, just tell us what you mean by "in so many words," sir. A. I meant just exactly what I said, using your phrase.

Q. I want you to use—I am using any kind of words that mean what I am trying to develop here. I do not care what the form of the words may be.

(The Court) What, if anything, did you hear, is the question.

(The Witness) Absolutely nothing about paying Mr. Johnson to make a speech.

(Mr. Doub) Absolutely nothing, that is right.

(The Witness) That is right.

By Mr. Doub:

Q. As a matter of fact, you told that to Mr. Tydings, did you not? A. I very probably did. I am pretty sure I did.

Q. And you told it to the FBI? A. Yes.

Q. And you told me that? A. Yes.

Q. Now, did you prepare this speech? You did not prepare this, did you? A. No.

Q. Don't you know that it was prepared by Mr. Buarque, Mr. Johnson's administrative assistant? A. That was my understanding.

Q. Now, you said that the Institute kept on hand copies of this speech of Mr. Johnson thereafter. The Institute also kept on hand copies of Congressman King's speech, did they not? A. Yes, we had copies there.

Q. Now, you testified this morning that you thought at the time the article in the Star criticizing this industry was unfair and you stated "I still think they are." A. Categorically.

Q. Categorically, you said. A. I refer specifically to the headline. Not the context of the story.

Q. Yes. Now, in the course of your association with Mr. Edlin, did he not reiterate and repeat to you that he was innocent of this charge that had been made against him? A. Many times.

Q. He said it was unfair and unjust? A. Yes, sir.

Q. What else did he say about this charge and its foundation? A. I did not hear you.

Q. Well, you testified he said it was unfair and unjust. He was innocent. Did he say who he believed had inspired it? A. By and large the Savings and Loan League, principally.

Q. The Federal Savings and Loan? A. Yes, sir. The United States Savings and Loan League and the Association of Insured Savings and Loan, and so forth.

Q. Did the Office of the Institute also keep on hand reprints of Congressman Ott's speech? A. Yes, we had some copies there.

Q. Didn't you tell Mr. Tydings that this charge that Mr. Johnson had made a speech for money was ridiculous and insulting? A. You say, did I tell Mr. Tydings that?

Q. Yes. A. How do you mean "tell Mr. Tydings." Do you mean to the grand jury or to Mr. Tydings.

Q. Didn't you just tell him personally when he inter-

viewed you? A. I do not recall saying that in so many words, no.

Q. Do you remember when I telephoned you on March 4, and talked to you about this? A. Yes, I do.

Q. What you knew about this case? A. I remember that.

Q. And I dictated a memorandum as to what you said?

(The Court) Mr. Doub, if you put that in, you will make yourself counsel and someone else will have to carry on the case. If you want to testify as to what you said, you may take the stand—you may ask him questions but it is on the understanding that you will be prepared to follow it up if he denies it and take the stand and let someone else who is here with you, your associates, carry on the case. You cannot undertake to testify, yourself.

You can continue until you take the stand.

(Mr. Doub) Thank you for the correction, Your Honor, and I accept the rebuff with good grace and that is all I have to ask this witness.

CROSS EXAMINATION

By Mr. Williams:

Q. Mr. Heflin, in response to a question by Mr. Marion concerning Congressman Boykin, you said that you had seen him once during 1960, I think, in front of the Mayflower Hotel in Washington. A. Yes.

Q. Is that the only time that you had seen him during that year? A. I think so, yes.

Q. Now, it was on an occasion when you left the Mayflower after having had lunch with Mr. Edlin. A. Yes.

Q. You and Mr. Edlin had lunched alone, had you, in the Mayflower? A. Yes.

Q. And you came out on to the street and Mr. Boykin came out? A. Mr. Boykin was standing on the street.

Q. And you were along at the time you saw him? A. Yes, sir.

Q. You spoke to him? A. Yes.

Q. Had you met Mr. Boykin before? A. Many times.

Q Where had you— A. Over a period of a good many years.

Q. Had it been in connection with your newspaper— A. Most everyone in Washington has met him.

Q. Had it been in connection with your personal newspaper career? A. Not in connection with that. I have been to various parties and things like that—dinners and social affairs and I think I have met Mr. Boykin once in Mobile during the war. It was an acquaintance.

Q. And you addressed him, you hailed him and greeted him and he responded? A. Oh, yes.

Q. And you stood there and chatted, did you? A. For a few moments.

Q. It was at this point that Mr. Edlin walked up? A. Yes.

Q. Mr. Boykin did not address Mr. Edlin by name, did he? A. I do not recall whether he addressed him by name. He shook hands with him but Mr. Boykin shakes hands with everyone.

Q. He shakes hands with everyone in Washington when he meets them on the street, is that not so? A. Just like they were a constituent.

Q. As if they were constituents or old friends. A. Yes.

Q. He shook hands with Mr. Edlin as though he were a constituent of his, right? A. Oh, yes.

Q. But he did not greet him by name? A. I do not recall any address by name.

Q. Mr. Edlin did not know who Mr. Boykin was until after you told him? A. He did not know who Mr. Boykin was?

Q. Yes. A. Everyone knows who Mr. Boykin is.

Q. I am talking specifically now about Mr. Edlin? A. Yes.

Q. Did you tell Mr. Edlin who Mr. Boykin was after Mr. Boykin left? A. Oh, I am sure I did not. I am sure Mr. Edlin knew who Mr. Boykin was.

Q. He knew who he was? A. I am sure he did.

Q. Now, how long did you talk there on the street? A. Oh, two or three minutes.

Q. Now, when you were talking to Mr. Marion or Mr. Tydings prior to your testimony you did talk to them before you testified here, did you not? A. Yes.

Q. Did they ask you about any contact that you had with Mr. Boykin during 1960? A. Only substantially what you are asking me now.

Q. You responded to them as you did here on the stand, that this was the only time you saw him to the best of your recollection in 1960? A. That is right.

Q. That is the only contact you had with Mr. Boykin in any respect in connection with the work that you were doing for the Institute of Savings and Loan Associations? A. Well, I saw Mr. Boykin, it was not in connection with any work. It was just "hello" in front of the Mayflower.

Q. There was not any discussion about that? A. None, whatsoever.

Q. Mr. Boykin never had anything to do direct or indirect with anything you did for the Savings and Loan Associations all during the time that you were working for them, did he? A. That is correct.

(Mr. Williams) That is all.

(The Court) Mr. Genn.

(Mr. Genn) No questions.

(The Court) Mr. Robinson?

(Mr. Robinson) No questions, Your Honor.

(The Court) Does the Government have any redirect?

(Mr. Tydings) The Government has no further questions of Mr. Heflin.

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(Vol. 8 [579]) Thereupon

BRADFORD WYCKOFF

a witness, having been duly sworn, was examined and testified as follows:

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Q. Directing your attention to the year 1958 did there come a time when you were employed by Mr. J. Kenneth Edlin? [580] A. Yes.

Q. Approximately when was that, Mr. Wyckoff? A. August, 1959.

Q. In what capacity were you retained? A. Advertising manager for First Continental Mortgage Corporation.

Q. Generally, what were your duties? A. To prepare newspaper advertising and mailing pieces.

Q. Did there come a time when you performed any similar type of services for the First Colony Savings and Loan Association of Prince Frederick, Maryland?

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[583] Q. At the time you returned were there any copies of a Congressional Record speech made by Congressman Johnson on the premises? A. Yes.

Q. And did you utilize these speeches in any way in your advertising program? A. Yes, in answering the correspondence.

[584] Q. And how would they be utilized? A. If someone raised a question of whether or not the accounts were federally insured, a copy of the Johnson speech would be enclosed.

Q. Were the accounts of either the First Colony Savings and Loan Association or the First Continental Savings and Loan Association insured by Federal Savings and Loan Insurance Corporation? A. No.

* * * * * *

[589] By Mr. Tydings:

Q. You do not have to. Just give the jury the best of your knowledge and recollection, the substance of what Mr. Edlin told you. A. The substance was that there were friends on the Hill, connections, who would assist him in proceeding to get the case dispensed with.

Q. Did Mr. Edlin ever mention any names of his friends on the Hill? A. In that manner, not specifically, no.

* * * * * *

(Mr. Tydings) No further questions.

(Vol. 9 [665]) Thereupon

RAYMOND J. DAVIS

a witness, having been first duly sworn, was examined and testified as follows:

* * * * * *

[666] DIRECT EXAMINATION

By Mr. Marion:

Q. Mr. Davis, where do you reside? A. In Berlin, I suppose you could say.

Q. Berlin, Maryland. A. We say Berlin, Eastern Shore.

Q. By whom are you employed? A. Exchange and Savings Bank.

Q. That is the Exchange and Savings Bank of Berlin, Maryland? A. Yes, sir.

Q. And you are the cashier and the officer in charge of that bank, are you? A. Yes.

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[697] CROSS EXAMINATION

By Mr. Williams:

Q. Mr. Davis, government exhibit 62 is a check in the amount of $800, right? A. Yes, sir.

Q. That was drawn on March 31, 1961 and deposited on April 7, 1961, is that correct? A. It looks like it; yes, sir.

Q. Now, that check was drawn on the Industrial National Bank of Miami, Florida, right? A. That is right.

Q. Now, when that check was entered on Mr. Johnson's ledger card as a deposit, it was conditionally credited to [698] his account, was it not? A. Yes.

Q. That was subject to be—

(Mr. Tydings) Do you understand that question, Mr. Davis? Don't hesitate to ask Mr. Williams if you have any question.

(The Witness) Anyway, it was credited to his account the day it came in.

(The Court) There was a word in there that had important legal consequences. Conditionally credited.

(The Witness) I do not know what that means. What do you mean by that to make sure?

(Mr. Williams) I will tell you what I mean by it, Mr. Davis. I mean in case that check bounced, you would debit his account, would you not?

(The Witness) We certainly would.

By Mr. Williams:

Q. So, it was a conditional credit on April 7? A. All of them were that way. I will put it that way right now.

All other depositors that we have that is true of.

Q. All of the checks that you testified to today would have that same rule apply, is not that so? A. That is so.

[699] Q. Now, you did not find out whether that check cleared or whether it bounced for several days after you credited it on the ledger cards, did you? A. We did not.

Q. How do you find out? Do you find out from the clearing house? A. They come back through regular channels. They were sent out from our exchange through regular channels and unless they are protested, then you hear right away.

Q. What would be the channels for a check going to the Industrial National Bank of Miami? A. We would send it to Baltimore and then to the Federal Reserve and Federal Reserve takes care of it in Miami.

Q. Where is the Federal Reserve clearing house located as far as you know? A. Baltimore. We put Baltimore, Maryland on it.

Q. You sent it to Baltimore? A. We send it to our correspondent.

Q. What about checks that would be drawn on the Bethesda Chevy Chase National Bank? A. They would go the same way. They all go through the Federal Reserve.

Q. Which Federal Reserve Clearing House would it go through?

[701] Actually, is it not the fact, Mr. Davis, that the credit to Mr. Johnson or any other depositors' account does not— A. Let us say any other depositor of good standing because all the depositors are not classified the same way. Mr. Johnson is in good standing.

Q. I will adopt your amendment and restate the question.

Is it not true that the credit to any depositor's account who enjoys good standing, be he Mr. Johnson or anyone else, does not have a final credit which can not be removed until the check has cleared on the drawee bank? A. I suppose. I do not know what you mean by "any way."

(The Court) If he does not know what you mean, I think that is all he can answer. He has testified that if the check bounced, he would debit the account.

(The Witness) Sure, we do any time. I mean when a check comes in of any size—and it goes through, if we hear no further from it, the depositor hears no further from it. If the check comes back, the depositor is notified right away.

By Mr. Williams:

Q. So that the check is not finally credited until [702] there is clearance at the drawee bank, is not that so?

(Mr. Tydings) I object to that, Your Honor, that is not what the witness said.

(The Court) Objection sustained. The Court will have to instruct the jury on the law on the matter and you will have to argue the facts from what the witness has told you of the facts.

Now, he says he does not know what the word "conditional credit" means. If he does not know what it means, and if that is going to be the controlling expression that the members of the jury are going to have to pass on—which I do not intimate one way or the other until I hear the argument on the law—you will just have to get the facts from the witness that he knows and then argue to the jury how that fits into the law as the Court will have to give the jury the law. I do not think that you can get him to give you an answer which is a mixed question of law and fact, especially if he does not know the meaning of the question.

(Mr. Williams) I am really not trying to elicit any opinion on the law from him. I am trying to find out when the credit becomes final but I will desist here. I have no further questions.

(The Court) Any further questions, Mr. Williams.

(Mr. Williams) I would like to ask the witness [703] a question, Your Honor. I do not intend it to circumvent Your Honor's ruling. If Your Honor feels it is a circumvention, I will withdraw it.

(The Court) Fine. I want you to get all the facts you can from it but I think it has to be couched in words that he understands.

(Mr. Williams) All right.

By Mr. Williams:

Q. As I understood your testimony, Mr. Davis, if the check bounces, you revoke the credit that is given the depositor on the card? A. We charge it back to his account. I do not know if you say it is revoked. He generally has funds to cover it or if not, he will have to get the funds there.

Q. Does there come a time in your routine practice and custom as a banker at the Exchange and Savings Bank at Berlin when you can no longer revoke that credit for a particular check? A. No.

Q. It does not? A. Well, of course, there is a time. It cannot stay in the other bank. If it is not good, they have got to send it back and, of course, that only takes four or five days for them to do that. If they do not send it back, why, of course—

[704] Q. If they do not send it back, you allow the credit to stand? A. Surely.

Q. Thereafter you cannot revoke the credit on that check? A. No, because if they do not—I do not know what you are getting at because we have never had any experience like that.

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(Vol. 10 [762]) T. LAMAR CAUDLE

a witness, having been first sworn, was examined and testified for the record as follows:

(The Clerk) State your full name for the record.

(The Witness) Theron Lamar Caudle.

(The Clerk) Take the stand, please.

DIRECT EXAMINATION

By Mr. Marion:

Q. Mr. Caudle, where do you reside? A. Waynesboro, North Carolina.

Q. Are you an attorney? A. I am an attorney.

Q. Do you practice law in Waynesboro, North Carolina? A. That is my home town. I was born there and I practice law there, yes, sir.

Q. Waynesboro is about fifty or sixty miles southeast of Charlotte, North Carolina, is it not? A. Fifty-three.

Q. Near the South Carolina border. A. It is about fourteen miles from South Carolina.

Q. Now, Mr. Caudle, just by way of background, in 1940 you were appointed a United States Attorney for the [763] Western District of North Carolina, were you not? A. Yes, I was nominated by Mr. Roosevelt.

Q. And served in that position until 1945? A. Yes, I was renominated again. It is a four-year term. I was renominated again by the President in 1945 and confirmed after the nomination, of course.

Q. In 1945 you were appointed assistant attorney general in charge of the criminal division of the Department of Justice, were you not? A. Yes, by President Truman, by Mr. Clark.

Q. And remained in that specific capacity until 1947 when you became the Assistant Attorney General in charge of the tax division? A. In September, 1947 and then he ordered me transferred as supervisor of the Tax Division.

Q. How long did you remain as attorney in general

charge of the Tax Division of the Department of Justice? A. Four years.

Q. Until when? A. November 16 at 3 o'clock in 1951.

Q. At that time your services were terminated by the President? A. Absolutely.

Q. Now, thereafter, Mr. Caudle, did there come a [764] time when you were indicted by a Federal Grand Jury in St. Louis, Missouri? A. Yes, sir, I think everybody knows that. They ought to.

Q. You were indicted with Matthew Connolley, and a lawyer by the name of Schwimmer, is that correct? A. That is correct.

Q. That was in 1955. A. The indictment was returned on December 1, 1955.

Q. And there was a trial in that case in St. Louis in the spring and summer of 1956, is that correct? A. Yes, sir, it is a long trial. It was six weeks, began on May 4, 1956 and ended on June 14.

Q. And at the conclusion of that trial you were found guilty, were you, and Mr. Connolley? A. Yes, sir, we were found guilty of conspiring together to deprive the government of our best services.

Q. This indictment involved your alleged activities while you were an assistant attorney general? A. Yes, sir.

Q. Now thereafter did you have occasion to engage in a number of appeals including appeals to the Supreme Court and motions for a new trial? A. Oh, yes, that was a pretty long process. We [765] had to go into the 8th Circuit. That was the District that the 8th Circuit was in. From there we lost. We tried to get in to the Supreme Court, with a petition for a writ of certiorari and it was denied.

Q. All right. Do you know any or all of the four defendants involved in this case? A. Yes, I know all of them.

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[766] By Mr. Marion:

Q. Mr. Caudle, during the period of time you were engaged in your appellate litigation in connection with the trial at St. Louis, did you have occasion to [767] meet the defendant J. Kenneth Edlin? A. Yes, I did.

Q. Do you recall when it was that you met Mr. Edlin? A. It was in March, 1959.

Q. And do you recall where you were when you met Mr. Edlin in March of 1959? A. I was in my room at a suite I had at the Alkazar Hotel on Biscayne Boulevard, Miami, Florida.

Q. Were you introduced to him by mutual friends? A. Yes, Mr. Frank Nathan was the one who introduced me to him. I knew him.

Q. What conversation transpired between you and Mr. Edlin at that time? A. It is hard to be exact except we talked quite a bit there. He said he knew all about me, of course, heard about me and was very much interested in me and he said, he told me about an unpleasant experience he had had in Chicago, himself, and was very sympathetic and he said that he would, if I lost my case and had to go, for me not to wory about any litigation or legal assistance because he had plenty of work for me to do if I would take it.

Q. He had what? A. Plenty of work for me to do as an assistant [768] attorney if I would do the work. That was the substance of the conversation.

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Q. Did there come a time in 1959 when you learned of an indictment against Mr. Edlin? [769] A. Yes, sir.

Q. And do you recall where you were when you learned that and how you learned that? A. Well, I do not know exactly where I was or whether Mr. Edlin called me on the telephone and told me about it or whether I saw some account of it but I know I found out from him and he and others—Miss Edlin, his sister, and Mr. Jackson Rains and

First Colony Savings and Loan Association in Maryland were indicted.

[770] (Mr. Genn) May we approach the bench, please?

(The following took place at the bench, out of the presence of the Jury:)

(Mr. Genn) Your Honor, so that there will be no waiver, he is speaking about a conversation with Mr. Edlin, and I believe any conversations this witness has had with Mr. Edlin should not be admissible. I think the Government is going to be opening up the door before we have a chance—

(The Court) The question is how far do you contend your privilege goes? What is the privilege going to be? Do you contend that Mr. Edlin engaged Mr. Caudle to act as his attorney in connection with various matters?

(Mr. Genn) Yes.

(The Court) Attorney as such?

(Mr. Genn) Yes.

* * * * * *

[772] (The Court) The basis of the privilege is an attorney may not testify to what his clients told him, and he may not testify as to advice which he gave his clients.

(Mr. Genn) Or those people who participated in the decision making process are just as much a part of that privilege as are the direct parties themselves, should it be a secretary, the agents, the employees, who are participating in the decision making process of attorney-client. They are as much a part of this.

* * * * * *

[782] Q. And what did you do then, return home to Waynesboro? A. Oh, yes. I returned hime to Waynesboro and cleaned out of Tallahassee. There were about fifteen reporters and photographers, and it was hard to get out of the place, and I got home that night.

Q. Did there come a time thereafter that you heard again from Mr. Edlin? A. Oh, yes, sir.

Q. And what, if anything, did he have in mind for you to do at that time?

(Mr. Genn) I object to that. First of all, the form of the question is calling for an impression.

(The Court) I will sustain the objection to the [783] question as asked at this time. Now, if you want to make a proffer, and maybe we can agree whether it would be better to ask a narrow leading question, narrower question, at the risk of being leading, or whether it is totally inadmissible or what you want to do. Do you want to talk about that?

(Mr. Tydings) I think we understand the Court's ruling. We can ask a narrow, leading question so we can protect Mr. Genn's rights.

(Mr. Genn) We will hear the question.

(The Court) Be careful if you have a doubtful question not to ask it in a way so that I will have to tell the jury to disregard it. Be careful.

(Mr. Marion) If you prefer we can come up to the bench and proffer the question.

(The Court) By asking a narrow leading question we can keep it in bounds, but there is also some danger of making suggestions which I might have to tell the Jury to disregard. I would rather hear the proffer in connection with this particular question out of the presence of the jury.

(Bench conference out of the presence of the Jury:)

* * * * * *

[788] (End of bench conference, when the following took place in open Court:)

(The Court) I think that the Jury may know this much of the nature of what we have said. There is a rule of law that communications between an attorney and his client are privileged, so that a client may talk to his attorney freely and may get advice from the attorney freely. Now, that is a general rule.

The particular application of that, or its possible application here, has presented certain possible difficulties which we have had to talk about, and so questions may be narrowed a good deal.

Go ahead.

By Mr. Marion:

Q. Mr. Caudle, directing your attention to the early part of 1961, did there come a time when you came [789] to Washington or Maryland for the purpose of performing legal work for the First Continental Savings and Loan Association? A. Yes, sir, on a part-time basis, off and on.

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By Mr. Marion:

Q. Did you have occasion to hear the name of Congressman Johnson? [790] A. Yes, sir.

Q. And from whom did you hear his name? A. From Mr. Edlin.

Q. And what did Mr. Edlin say about Congressman Johnson?

(Mr. Genn) This is a violation of what the Court has specifically instructed, and this is prejudicial to emphasize this.

(The Court) I will sustain the objection unless you have any possible admissible conversation that you can make the proffer. You cannot talk about conversations between them, because the relationship was either attorney-client or so close to attorney-client that we are now going to treat it as such unless you want to treat it different. You can have him testify to what, if anything, he did, not as to what, if anything, Mr. Edlin may have told him or said to him or may not have said. I don't intimate that Mr. Edlin did say or didn't say. Go ahead.

By Mr. Marion.

Q. Did you have occasion thereafter to meet Congressman Johnson? A. I did.

Q. Where did you meet him? A. In his office.

Q. In his congressional office?

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[792] Q. What, if anything, took place when you first met Congressman Johnson? A. There was discussion in the presence of Mr. Edlin and Mr. Robinson about the indictment that involved Mr. Edlin, his sister, First Colony Savings and Loan Association and Mr. Jackson Rains.

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[793] By Mr. Marion:

Q. All right. You were starting to say what you explained to Congressman Johnson at that meeting. A. I explained to Congressman Johnson that an indictment was an instrument where the grand jury found probably cause to allegations of some violations of the Federal law or a state law, for that matter, and that it was extremely difficult and very hard, unless it could be overwhelmingly shown that the Government was in error, to have the indictment once it was returned dismissed; that it was very rarely ever when I was associated with the Department of Justice that an indictment was dismissed, but indictments were dismissed when it was conclusively shown that the Government was in error by its own attorneys, and they were dismissed.

Q. What, if anything, did Congressman Johnson say [794] when you advised him of that? A. Congressman Johnson, from my conversation with him, we didn't go into the merits at that time, but he was very much familiar with the subject. I had been with the subject off and on.

Q. What did he say when you advised him what you just indicated? A. He said that was true; that it was a very difficult thing, even in the state courts, after the indictment had been returned because the grand jury had found probable cause.

Q. What, if anything, did Mr. Edlin say at that time? A. I do not know what Mr. Edlin said at that time. Mr. Johnson was a lawyer and I was a lawyer. He listened a

great deal, particular when I described again—I had done it before—the procedures that ought to be followed to bring this thing into focus. The indictment contained 31 paragraphs. It was a long instrument, and any attorney reading it would have to read it over and over and then have many conferences before the thing would become in focus to him, in my opinion. I told Mr. Johnson that, and I told Mr. Edlin that.

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[795] By Mr. Marion:

Q. What, if anything, can you recall had been said by anyone prior to the time when you made that remark you testified to? A. Well, I explained—I had explained to Mr. Robinson and Mr. Edlin that the procedures of the Department of Justice, when I was there as an Assistant Attorney General in the Criminal Division—

(The Court) Wait a minute, Mr. Caudle.

[796] (Mr. Genn) Who was present in these conversations? Who was present in the conversation you are just relating?

(The Witness) Mr. Edlin and Mr. Johnson and Mr. Robinson. We were all together.

(The Court) I think that what Mr. Genn had in mind was that, from the way you put it, it looked like you were telling of something you had told Mr. Edlin and Mr. Robinson, not in Mr. Johnson's presence. He was asking whether it was a communication?

(The Witness) No, sir, just a general policy that the Department of Justice has.

(Mr. Genn) Your Honor, if the Court please, I don't like to be going to the bench regularly on this matter, but I think it is necessary that we approach the bench one further time.

(The Court) All right.

(The following took place at the bench, out of the hearing of the Jury:)

(Mr. Genn) We have this difficulty with the same problem, Your Honor. The only thing I can say of this conversation that would make this admissible or any of this discussion is the fact that Mr. Johnson's presence is apparently some third party, and this was not given in relation to the confidential relationship between [797] Mr. Caudle, Mr. Robinson and Mr. Edlin.

(The Court) It might be admissible as an act in furtherance of the conspiracy, not as evidence that the conspiracy existed, but as an act in furtherance of the conspiracy.

* * * * * *

(Mr. Genn) Mr. Johnson was an attorney. There were three attorneys there, and Mr. Edlin.

(The Court) There is no evidence in the case so [798] far that Mr. Johnson was acting as attorney for Mr. Edlin or for anybody else, and Mr. Johnson has denied that he was paid for being employed to do this or being paid for doing it, and there is no evidence up to this point to prove that he was acting as an attorney for Edlin in approaching the Department of Justice. Now, I don't know what the evidence is going to show.

(Mr. Genn) I have indicated just for the record an objection on this line. It seems to me that it was given in the area and characterization of a confidential communication. Now maybe I don't know the position Mr. Johnson is finally going to take in reference to this.

(The Court) But there hasn't been a word of testimony yet that Johnson was employed to act as an attorney by Edlin in this connection, is there?

(Mr. Robinson) The witness himself just said that in his conversation that Mr. Johnson as a lawyer and Mr. Edlin as a layman had little to say in the conference. He specifically referred to Mr. Johnson as a lawyer.

(The Court) Yes, but the lawyer-client privilege doesn't allow an attorney and client to violate the law.

(Mr. Robinson) But it does allow him to consult with other attorneys, doesn't it?

[799] (The Court) If that is what this purports to be. I had not realized that this was what this purported to be. It was not a consultation with another attorney.

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[801] At the Bench:

(The Court)

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[803] (Mr. Genn) I think they ought to be limited to stating what he did or facts, and I think that they should be prevented from showing communications between Edlin and Caudlin in this relationship.

[804] (The Court) These are not communications between them. When they go with him to see Johnson to get Johnson to do something.

Now, everyone—there is no doubt that, as far as I can see, nobody denies that it happened and it would be a perfectly proper thing for Mr. Johnson to do if he did not get paid for doing it. So that I do not see what the—

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(Vol. 11 [814]) By Mr. Marion:

Q. Mr. Caudle, at the close of the day yesterday, you were being asked about the discussion which took place either the first or second time when you met Congressman Johnson in his office in the House Office Building? A. Yes, sir.

Q. And you indicated that you made some comment at that time about the difficulty of getting an indictment dismissed. A. That is correct.

Q. And my question to you is what, if anything, do you

recall having been discussed which led you to make such a remark at that time?

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[816] (The Court) Now, before he answers, let me make this caution that I did say I would make to Mr. Caudle. Just remember to answer the questions that are put to you because you realize, as well as we do, that there are certain border lines of privilege, certain things you can testify to and certain things that you can't.

(Mr. Marion) May I ask the reporter to read back my question where the objection came somewhat earlier?

(The reporter read the record as follows:

"Q. And my question to you is what, if anything, do you recall having been discussed which led you to make such a remark at that time?

"A. Well, I had been—")

By Mr. Marion:

Q. Do you understand the question? A. I think I do. I thought you were asking—read it one more time so I can be sure of the question.

Q. The question was what, if anything, had been discussed at that meeting which led you to make the remark which you made with regard to the difficulty of getting the indictment dismissed? A. We discussed the indictment.

(The Court) There is quite a difference between an indictment and the indictment. You can not ask him [817] anything that had been said by the people which would lead him to make any remark about a particular—the particular indictment.

(Mr. Marion) I corrected that.

(The Court) The testimony as he gave yesterday, as I recall it, was admitted because he was talking in general terms about the difficulty of getting an indictment generally dismissed.

(Mr. Williams) Your Honor, may I say on behalf of the defendant Boykin, that we, of course, do not object to this and I do not think that this testimony, Your Honor, is privileged because of the presence of non-lawyers in that meeting.

(The Court) What position does Mr. Doub take on that?

(Mr. Doub) Your Honor, I agree with that. I do not see how it could be under the conditions we are talking about.

(Mr. Williams) Perhaps I misspoke myself. I said non-lawyers in the meeting. I mean to say, Your Honor, the presence of lawyers who were not in a representative capacity to Mr. Edlin.

(The Court) Within the meaning of the rule from a professional legal adviser in his capacity as such, which is the No. 2 element in Wigmore.

[818] (Mr. Genn) I have already stated my position for the the record.

By Mr. Marion:

Q. All right, Mr. Caudle, let me withdraw that question.

How many conferences do you recall sitting in on in Congressman Johnson's office in connection with this particular matter? A. That was probably three or four maybe on this subject.

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Q. All right. Now, as a result of those three or four conferences, was any decision reached as to something [819] which you would do? A. Yes, sir.

Q. What was that? A. That, with the assistance of Mr. Robinson, we would analyze and prepare an analysis of the 31 paragraphed indictment.

Q. And with whom did you discuss that? A. Congressman Johnson in the presence of Mr. Edlin and Mr. Robinson.

Q. What do you recall Congressman Johnson saying about the preparation of such an analysis, if anything? A. He thought that my idea about the matter is proper and that it ought to be done.

Q. And what, if anything did he ask you to do? A. He asked me, would I and Mr. Robinson work on the matter and prepare it? I told him I would but it could not be done in Washington because there were no facilities there to do the work.

Q. And what do you mean by "no facilities" there to do the work. A. There was not any legal secretary.

Q. Where? A. In the First Continental Savings and Loan Association. There was no office and I simply did not have any place to work and neither did Mr. Robinson have on [820] the matter of this indictment analysis.

Q. And so what, if anything, was done as a result of that conversation? A. In consequence of that conversation Mr. Robinson and I flew to Miami, Florida.

Q. And can you recall when it was that you flew to Miami, Florida? A. Yes, it was around about March 18, 1961. We were there for four days, if I remember.

Q. And what did you do while you were in Miami? A. Went to Mr. Robinson's office where he had a very able secretary and he was very well saturated, I would say, with the facts so he was to dictate it. I was to be present and we were to be as minute and accurate as we could on the facts as to each paragraph, and that went on all day and into the night as long as we could take it, the next day, the next night, the next day and the next night. Then it took a day as I remember for it all to be typewritten.

Q. And what was your function in connection with that? What actually did you have to do with it? A. I was really supervising the analysis and you might say I was co-author of it with Mr. Robinson.

Q. Was a draft being prepared as it was being dictated? [821] A. I think so, yes, sir.

Q. And what, if anything, to the best of your recollection was done with copies of that draft as it was being prepared? A. I think Mr. Robinson furnished Congressman Johnson, the best I can recall, with the copy.

Q. Do you recall approximately how long you stayed in Miami? A. Yes, sir, we stayed there until March 18 to the 23rd as far as I can recall.

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Q. What, if anything was done with that analysis upon your return to Washington? A. You mean what we did with it?

Q. Yes. A. Gave it to Congressman Johnson in his office.

[822] Q. Who was present when you gave it to Congressman Johnson in his office? A. I know that Mr. Robinson and I were together, and whether Mr. Edlin was along at this time, I do not remember.

Q. All right. What, if any conversation took place at that time? A. Congressman Johnson said that he wanted to study it thoroughly and he would talk with us again about it. As I remember, the best I can remember.

Q. Did you have occasion to discuss it further with him? A. Yes, sir.

Q. Do you recall how soon thereafter that was? A. I do not remember but it was pretty shortly after that. He said he studied it very carefully. He was very much impressed with it.

Q. Who was present on this occasion when he said he had studied it? A. Mr. Robinson was present I remember, and Mr. Edlin.

Q. Who else was present, if any one? A. Congressman Boykin came in along about that time for a few minutes

and he would not stay but a few minutes, maybe once or twice. Could have been three times. I do [823] not know. Not in one day. This analysis—well, I am not—

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By Mr. Marion:

Q. Finish what you planned to say. A. Mr. Boykin came in for a few minutes. He never stayed long. I think he came at least two times if I can remember. I do not think—He spoke to everybody in the office as he usually does and I did undertake to explain this thing to him, a long analysis on a 31-paragraph—31 page indictment, and it was prepared for the purpose of presenting to the Department of Justice for it to be reviewed and evaluated on its merits.

[824] Q. How did you know that? A. How did I know that?

Q. Yes. A. Well, I knew. I had told Mr. Edlin and I had told Mr. Robinson and I told Mr. Johnson that the Justice Department was an institution of record and that the only way that the defense of Mr. Edlin and his sister and First Colony, and Mr. Jackson Rains could be brought into force, this analysis would have to be prepared and should be left with the Justice Department and those in the Criminal Division who would administer the statute. They would be the ones that would have to study it and evaluate it to get any action on the merits of the matter.

Q. What, if anything, was discussed about the Department of Justice, and who might be contacted there? A. Oh, Congressman Boykin said that he knew the Attorney General, Mr. Kennedy, and as I understood, Congressman Johnson did not know him, and that they would take [825] it over and present it to Mr. Kennedy, that they would go over and have a conference with the Attorney General at his level because they were members of the House.

Q. Because they were Congressman? A. Yes, that is right.

Q. Do you know whether, shortly thereafter, that particular conference, anyone did go to the Department of Justice to see the Attorney General? A. Yes, sir.

Q. How do you know that? A. Because Mr. Edlin and Mr. Robinson kept up with Congressman Johnson's office, one of the two, and they wanted to know what was the reaction and the reception they received on the subject and so we went back to Congressman Johnson's office.

Q. Who was present when you went back to Congressman Johnson's office? A. I know Congressman Johnson was there and, of course, his secretary and force were out of the office, Mr. Robinson and Mr. Edlin were there.

Q. Was Congressman Boykin there? A. I think Congressman Boykin came down a few minutes after we were there for a little while.

Q. What, if anything was said during that time?

[826] (Mr. Williams) During what time?

(Mr. Marion) During the time when Congressman Boykin, Mr. Edlin and Mr. Robinson were present with you.

(Mr. Williams) At any time that the four were there?

(The Court) It was, altogether, five.

(Mr. Marion) The four defendants and Mr. Caudle.

(The Court) Mr. Johnson, Mr. Boykin, Mr. Edlin and Mr. Robinson were there with the witness.

(The Witness) Mr. Boykin stated that Mr. Kennedy was very patient with them. That he knew very little about the facts if any at all, but Mr. Johnson was the one who presented it to Mr. Kennedy, and I recall that Congressman Boykin said that Mr. Johnson made a very able presentation of the matter and that he just sat and listened.

By Mr. Marion:

Q. Do you recall anything else discussed at that time? A. No, sir, except neither one of the gentlemen gave any

encouragement about the reception because it was to be left there and then the Attorney General, of course, would forward it down to whoever administered the statute.

Mr. Miller, the Assistant Attorney General in the [827] Department of Justice—

Q. Do you know whether or not either Mr. Boykin or Mr. Johnson went back again to the Department of Justice after that? A. I believe they did. I think they did, Your Honor.

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[828] By Mr. Marion:

Q. Do you recall how you knew they went to see Mr. Miller? A. My best recollection is that it was later on. I was there again and we went back to Congressman Johnson's office, if I remember and he said they went over and had a conference with Mr. Miller. That is my best recollection, Mr. Marion. That is the best I can do.

* * * * * *

[835] By Mr. Marion:

Q. Mr. Caudle, would you state what legal work if any, you performed for First Continental Savings and Loan Association in the office of First Continental Savings and Loan Association in 1961? A. Well, in 1961 I was in many conferences with Mr. Edlin and Mr. Robinson—groups of people who were potential borrowers. One of the matters that I remember, I went through the file from the beginning—was money that First Continental and I believe First Colony, too, had loaned to an architect by the name of Cassell.

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Q. What, if anything, did you do in connection with the loan to him? A. Of course, I read and studied the underwriting agreement which had been prepared by someone—perhaps Mr. Robinson. I examined—I wanted to check into the [836] insurance company that insured it and I was anxious to know the certificate of title, who prepared it, and as I remember the various deeds, I mean deeds of trust

were made on separate lots that had been sold by Mr. Cassell to various people and the notes and the deeds of trust securing the sale of these lots were made and the balance were all in this file. There were a large number of them.

* * * * * *

Q. Did you also have occasion to participate in any conferences in the office of the Washington attorney by the name of Lykes Boykin? A. Oh, yes.

[837] Q. In connection with what matter, sir, did you sit on conferences there? A. Mr. Arthur Desser, whom I met for the first time in Mr. Lykes Boykin's office—

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By Mr. Marion:

Q. Do you recall approximately when you first began sitting in on conferences involving Mr. Desser? A. I can say that it was sometime around the latter part of February or early April of 1961.

Q. Now, what was the purpose of those conferences? A. Mr. Desser was president of a corporation and, as I recall, Leftcourt Realty Company. This corporation owned 8,000 acres of land in Waldorf, Maryland which is 23 miles from Washington.

Q. Do you know from whom they had acquired that land? A. I understood that it was purchased from Mr. Albert Ernest of Jacksonville, Florida. He had the note of the deed of trust as I remember—Mr. Albert Ernest.

Q. Had you met Mr. Ernest prior to that time? A. Yes, sir, Mr. Albert Ernest at that time was [838] dealing with cancer. He nearly died and I had known Mr. Albert Ernest before then.

Q. Now, whom had you met Mr. Ernest through? A. Through Congressman Boykin.

Q. Was anyone acting or holding a power of attorney for Mr. Ernest at the time you were engaged in conferences

with Mr. Desser? A. I think Mr. Boykin had a power of attorney.

Q. Which Mr. Boykin? A. Frank W. Boykin.

Q. Congressman Boykin? A. Yes.

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[839] Q. Who was present representing Mr. Edlin in those conferences? A. Mr. Robinson was there with me, * * *

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[842] Q. With whom did Mr. Edlin want you to negotiate?

(Mr. Genn) If the Court please, we are in the same difficulty we have been in previously. I do not understand. Who was present in this conversation, Mr. Caudle? [843] A. You mean the one I am talking about?

(The Court) You say Mr. Edlin wanted you to negotiate so that the savings and loan associations could buy the note from Ernest, was what I understood. That is the meeting—

(Mr. Genn) Yes.

(The Court) Who was present at such a meeting?

(Mr. Williams) This cannot be any privileged communication, Your Honor.

(The Court) I think he is just fixing the time or fixing who was there.

(The Witness) This was not any meeting.

(Mr. Genn) May we approach the bench, if the Court please?

(Bench Conference.)

(Mr. Genn) Now, if the Court please, previously Mr. Williams made some response and volunteered a statement with reference to a conversation as to Congressman Johnson.

Now, of course, I have no statement with respect to what Mr. Williams feels necessary for the protection of his client but I do not believe that it is appropriate for counsel to simply volunteer this type of information if the Government has no objection. The last statement, it seems to me, falls within the category of a volunteered statement, too.

[844] If these conversations are conversations and communications between Mr. Caudle and Mr. Edlin, what they discuss between themselves as to what Mr. Edlin desired to do, I think is privileged between them.

(The Court) Did he negotiate to get a loan?

(Mr. Genn) If the Court please, I think the characterizations of the way he did it may be in dispute or the way he has testified. I am simply stating that I think these conversations should not be admissible and that all that should be admitted is what he did.

(The Court) But he had to show that he did it at Edlin's request or instructions.

(Mr. Genn) Well, he is stating what Mr. Edlin wanted.

(The Court) He said Mr. Edlin wanted him to negotiate so the savings and loan could buy the note from Ernest. Now, then, if he did it, I do not see there is any—you are the one that asked when the conversation took place. I suppose the Government's next question was, did you do anything?

(Mr. Genn) I think I said who was present. I just wanted to know whether it was a privileged conversation.

(Mr. Marion) He wanted him to negotiate with someone else. I do not see anything secretive.

[845] (The Court) I do not see anything privileged at that point, though what was said in the conversation might easily become privileged. You have not objected up to this time. The only objection at this time is who was present.

Mr. Williams did make a voluntary comment then which I happened to agree with generally. But I think you just have to take it step by step.

(Mr. Tydings) Are you interested in the Government's thoughts on Mr. Williams' and Mr. Doub's comments on Mr. Genn's objections. I think they are entirely improper and I think the Court should instruct them if Mr. Genn wants to object, they should come up and approach the Bench but they should not prejudice Mr. Genn's objection. If they do not agree with Mr. Genn's objection, let them come to the Bench.

(Mr. Williams) Unfortunately, in these multi-defendant trials there frequently arises a conflict between the defendants which can not be avoided.

(The Court) I think there is a difference in saying this.

You can always say that you have no objection and I think Mr. Williams has the right for his own client to show that he is not trying to keep out any evidence and he may, therefore, say he has no objection [846] but I think he should not volunteer a suggestion that Mr. Genn's objection is without merit in front of the jury. I think there is a difference between saying you have no objection and saying you see no grounds for Mr. Genn's objection. They are different points.

(Mr. Williams) It assumes we have a community of interest with Mr. Edlin which I vigorously deny.

(The Court) What I am saying, Mr. Williams, is that you are saying you have no objection.

(Mr. Genn) If the Court please, the jury can hear some of this. I do not appreciate that comment.

Mr. Williams should not make statements like that at this time.

(Mr. Tydings) I agree with Mr. Genn entirely.

(The Court) The point I am making is that Mr. Williams has a right to say that he has no objection but he should not, in the presence of the jury, volunteer his comments on the validity of Mr. Edlin's objections.

* * * * * *

[850] By Mr. Marion:

Q. Mr. Caudle, when you were present in Lykes Boykin's office at which time Congressman Boykin was also present, what, if anything, was discussed? A. There were several conferences over there in Mr. Lykes Boykin's office and Congressman Boykin was there several times, and I do not want to leave the impression here that I positively know that Congressman Boykin was not present when Mr. Desser was there. I simply do not recall that he was. Mr. Edlin and I had gone over and seen this property, not all 8,000 acres. It is a vast area but we saw around the sides of it and that was when he wanted me to try to negotiate to buy the note that Mr. Desser's corporation was in default on.

Q. Now, my question is what, if anything, was discussed at those times when Congressman Boykin was present in Lykes Boykin's office—what was the subject of the discussion? [851] A. The subject was Waldorf. The Waldorf property.

Q. What was discussed with relation to Waldorf? A. The discussion was the possibility of negotiating and buying the note or buying an assignment of a note and there were several discussions about that and the terms of how much money would have to be paid down, and that is the best I can recall.

(The Court) Who buying from whom?

By Mr. Marion:

Q. Who was buying what from whom? A. The First Colony Savings and Loan Association, the First Continental Savings and Loan Association, as I remember.

We were negotiating the possibilities for the Association to buy that note that Mr. Albert Ernest had which was at that time about $5,900,000.

Q. With whom were you negotiating? A. With Mr. Boykin, Congressman Frank W. Boykin, yes, sir.

(The Court) And was he representing himself or someone else? Who held the note? Who was the—

(The Witness) Mr. Albert Ernest who I think was president of St. Regis Paper Company, I am not sure—of some paper company, I thought. Living in Jacksonville, Florida.

* * * * * *

[853] Q. All right. Now, during this same period of time, did a second tract of land enter into the discussions or negotiations? A. Yes, sir.

Q. And where was that tract of land located? A. That tract of land was 5,000 acres located east of Stafford, Virginia. Highway No. 1 goes right through the little town.

And that 5,000 acres was owned by the Tensaw [854] Lumber and Timber—Timber and Lumber Company.

Q. Tensaw Land and Timber Company. A. It was Tensaw. I know it started off with, but the tail end of the title I do not remember. Land and Lumber Company, I thought.

Q. Did you know any of the officers of that particular corporation? A. Well, that corporation was Mr. Boykin's—

Q. Which Mr. Boykin? A. Congressman Frank W. Boykin.

Q. It was his corporation? A. As far as I know. It was a family corporation as far as I know. I did not know very much about it. I knew that Tensaw Land and Lumber Company was a corporation and I knew that Mr. Boykin was identified with it.

* * * * * *

[857] Q. After you went down to Virginia, did you return, the four of you, to the District of Columbia? A. Yes, we came on back to Washington.

Q. Where did you go when you returned to Washington? A. We went back to the House Office Building with Congressman Boykin and Mr. Edlin and Mr. Niles Adams.

Q. And where did you go in the House Office Building? A. To Congressman Boykin's office.

Q. What, if anything occurred when you got to Congressman Boykin's office?

* * * * * *

[858] By Mr. Marion:

Q. Where did Mr. Edlin and Congressman Boykin go? A. In Congressman Boykin's office.

Q. You say they remained there about 45 minutes. A. Yes, sir, they were negotiating on this land.

Q. What, if anything, occurred when they came out at the end of the 45 minutes? A. Well, they came out and Mr. Boykin said that Mr. Edlin had negotiated him down a million dollars off of it and he was kidding him about it, about the purchase price of the land and I do not—maybe I did know the purchase price—how much the agreement was, but I do not remember the amount now.

Q. Now, Mr. Caudle, during the course of the time when you were present and participated in the Desser negotiations and in the negotiations relating to the Waldorf tract and the Brooke, Virginia tract, did you have occasion to go to Congressman Johnson's office? [859] A. Oh, yes, sir. Almost after every conference in the law office in the Solar Building, Mr. Lykes Boykin's office, we would go right straight over to Mr. Johnson's office and report.

Q. Who would go over to Mr. Johnson's office? A. Mr. Edlin and Mr. Robinson and myself would go over there many times to see the Congressman about Waldorf, about

that matter, the land on the Potomac that was owned by Tensaw Land and Lumber Company.

* * * * * *

By Mr. Marion:

Q. For what purpose would you go to Congressman Johnson's office on those occasions with Mr. Edlin and [860] Mr. Robinson? A. We went there for the purpose of Mr. Edlin's explaining to Mr. Johnson what we were doing and what we were trying to do and Mr. Edlin told me that Congressman Johnson's law firm represented the two associations.

* * * * * *

Q. How much time actually did you spend with Congressman Johnson on these occasions after he arrived in his office? A. Well, we would discuss all these things. The particular things over there in Mr. Lykes Boykin's office, with him.

How many times, a good many times. I just do not know how long we would stay sometimes. We would stay, sometime [861] we would wait there an hour or so before he ever came and then when he did come, we would probably take about—spend about an hour with him or maybe less than an hour but it was not very long. It was just waiting to see him until he could get loose to come down.

* * * * * *

Q. All right. Now, up to that time when you left in May of 1961, of you own personal knowledge, Mr. Caudle, what legal work if any was done by Congressman Johnson? A. Of my own knowledge?

Q. Yes. A. I do not know. I do not know. I know that we consulted with him, sought his advice, I know that once when I was there that we had completed the assignment of that note in Mr. Lykes Boykin's office, and I had talked to Albert Ernest at least twice and Congressman Frank Boykin several times and the note was in default and Mr.

Edlin went by one day and authorized the Congressman, Congressman Johnson to foreclose it.

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[866] CROSS EXAMINATION

By Mr. Williams:

* * * * * *

[869] Q. Yes, now, getting to the meetings that you described that took place in Mr. Johnson's office. A. Yes, sir.

Q. During January and February of 1961. [870] A. Yes, sir.

Q. At those meetings there were present yourself, Mr. Robinson, Mr. Edlin and Mr. Johnson? A. Yes.

Q. It was in those meetings as I understood your direct testimony, that you decided to prepare a memorandum covering all phases of the indictment against Mr. Edlin? A. Yes, that is correct, sir. Mr. Edlin and the other three.

Q. Specifically at whose suggestion was it that this memorandum was to be prepared? A. I think I was the one who brought it up, Mr. Williams. I am almost sure I did.

Q. In fact, Mr. Caudle, you knew from your experience at the Department of Justice that it was necessary in order to have a conference on a case for the defendant to state his position in a memorandum or orally, did you not? A. Yes, sir.

Q. And so the preparation of such a factual memorandum was essential? A. Yes, sir, I thought so.

Q. And you so advised Mr. Edlin? A. Yes, sir.

[871] Q. And Mr. Johnson? A. Yes, sir.

Q. And Mr. Robinson? A. Yes, sir.

Q. And it was after such a conference that you and Mr.

Robinson undertook to go to Florida to prepare such a memorandum? A. Yes.

Q. That was because Mr. Robinson's office is in Miami? A. That is correct, his law office and his home, too.

Q. Now, you fixed that in point of time, if I recall your testimony, Mr. Caudle, as on March 18 of 1961.

* * * * * *

[894] Q. Did you see the contract of sale between Tensaw and the purchaser or a deed of trust running back from the purchaser to Tensaw as part of your— A. Mr. Robinson and I went down to the Court House there in Stafford, Virginia to make—in fact, there was another tract of 150 acres which was just west of the 5,000 acre tract that Mr. Edlin was interested in and Mr. Boykin introduced us to the people who owned it. So, after that tract—Mr. Edlin told us it was really a routine thing. To go down to the court house and see if there was [895] any line against it. He knew there was not but check and see.

(Mr. Genn) If the Court please, for the record, I would like to maintain the objection to any conversation between Mr. Caudle and Mr. Edlin out of the hearing of any other individuals.

(The Court) Just tell what you and Mr. Edlin did and not what conversations you may have had about the purchase. You are talking now about the purchase of this 150 acres, is that what you are objecting to? Because that is what he is talking about now.

* * * * * *

[899] By Mr. Williams:

Q. Now, Mr. Caudle, it was only a matter of three weeks after these transactions about which I have been asking you were consummated that you left Mr. Edlin's employ? A. That is about right. I left on or about the 19th of May, 1961 as best I can recall.

(The Court) The answer was not responsive exactly.

You made the statement and he made a counter statement. I want to see if I understand it and whether the witness meant that. You left in May. Had the transactions been consummated before you left?

Is that the understanding of what you said?

(Mr. Tydings) If he knows.

(The Witness) I just do not know, Your Honor. I cannot recall. I just do not. I do not know. It has been almost two years ago.

[900] By Mr. Williams:

Q. But you do know, I take it, Mr. Caudle, that there were negotiations between Mr. Edlin and Mr. Boykin regarding the parcels of land at Waldorf and in Stafford, Virginia? A. Yes, sir.

Q. And in so far as you can observe these were arm's-length negotiations, were they not? A. Yes, sir.

Q. In fact, they haggled about prices and terms constantly, did they not? A. Yes, sir.

Q. There were times? A. There was argument on both sides.

Q. And there were times when the negotiations appeared to break down, did they not, Mr. Caudle? A. I just do not know. You see, I was coming up to the place and going back to my home and the continuity of these things would be broken when I left. And when I come back the continuity would continue from what I could be told by Mr. Robinson or Mr. Edlin took place or by Congressman Boykin.

Q. I am only asking you, Mr. Caudle, about those conferences and those negotiations and those discussions to which you were a party. [901] A. I was in a lot of them.

Q. Yes. A. Yes.

Q. And those were all arm's length negotiations, were they not? A. Oh, yes.

* * * * * *

[904] Q. You were familiar with the fact then that Mr. Edlin was an underwriter for the two savings and loan corporations and not an officer, director or shareholder? A. That is correct. He was underwriter. He was not an officer.

(Mr. Genn) No further questions.

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(Vol. 12 [906]) By Mr. Doub:

Q. Mr. Caudle, I just have a few questions to ask you. A. Yes.

Q. You testified that you prepared or helped Mr. Robinson prepare this memorandum which was submitted to Mr. Johnson? A. Yes.

Q. Did you and Mr. Robinson attempt to make that memorandum as accurate as possible? A. Yes, we tried our best. As accurate as possible. Factually accurate as possible.

Q. Yes.

[907] Now, did you hear Mr. Edlin say repeatedly that he was innocent of that mail fraud charge?

(Mr. Marion) If Your Honor please, if we are going to go into conferences which related to the merits of a matter in discussions where Mr. Edlin and Mr. Caudle were alone which the government could not bring out on direct, I wish to object to Mr. Doub's bringing it out on cross examination.

(Mr. Doub) I will modify the question, Your Honor.

(The Court) I think, if Mr. Edlin asked that question, he waived his privilege about those conferences and conversations and I do not see that it is particularly relevant to your case and I do not think you ought to waive it for him.

(Mr. Doub) I have withdrawn the question, Your Honor.

By Mr. Doub:

Q. You testified as to meetings with Mr. Johnson. A. Yes.

Q. In, I believe, February or March, 1961. A. Yes.

Q. Where Mr. Edlin was present and there was a discussion of the merits of the mail fraud case, right? A. Yes.

[908-909] Q. Now, in the course of those talks and in the presence of Mr. Johnson, didn't Mr. Edlin repeatedly state that he was innocent of this charge? A. Mr. Edlin always proclaimed his innocence.

Q. Yes, and as a matter of fact, didn't he tell Mr. Johnson that in your presence? A. Yes, sir. He said that in my presence and he said it many times.

Q. But before Mr. Johnson, too. A. Yes.

Q. Didn't he also tell Mr. Johnson that these charges had been inspired by a competitive federal savings and loan association? A. Yes.

Q. Now, in the course of that—in the course of those talks with Mr. Johnson were not you and Mr. Johnson in complete accord, Mr. Caudle, that the Justice officials would act on a request for a review of that case only upon the basis of the merits of the case? A. That is true. That was my opinion.

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[913] By Mr. Doub:

Q. Didn't you have some meetings with Mr. Johnson and Mr. Edlin and Mr. Robinson in Mr. Johnson's office with respect to various aspects of these complex negotiations? A. We certainly did. There were a lot of meetings in his office about them. Every time we would go by for instance, to see Mr. Lykes Boykin, we would leave and Mr. Edlin would go back and see Congressman Johnson if

he were in or go later and report to him what took place in Mr. Lykes Boykin's office, the attorney's office.

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[916] By Mr. Doub:

Q. Mr. Caudle, Mr. Edlin never told you at any time that he had paid Mr. Johnson money for talking to Justice officials, did he?

(Mr. Tydings) Now, again I am going to object.

[917] (The Court) Again you are opening up the entire, every conversation between Mr. Edlin and Mr. Johnson.

(Mr. Doub) Your Honor, I except to Your Honor's statement. I think that I have a right to ask that question. That is the charge. Here is a witness who knew Mr. Edlin well. And the idea that he cannot be interrogated upon such a matter of vital importance to Mr. Johnson I just cannot see.

(Mr. Tydings) If Your Honor please, he will have ample opportunity to make the witness his own witness and put him on in his direct case but we were restricted in our examination by the rules of court and the same rules should apply to you that apply to us. You can bring him back and call him and ask him all the questions you want.

(The Court) Since those questions were objected to by one of the defendants—

(Mr. Doub) Not by me.

(The Court) That is all right. It is not proper cross examination because there was no such testimony permitted as to any such conversations between Mr. Edlin and Mr. Caudle. If you wish to make Mr. Caudle your witness, you may ask him and then the Government may cross examine on that point.

[918] (Mr. Doub) I except to Your Honor's ruling.

(The Court) You say you except to the ruling?

(Mr. Doub) Yes, Your Honor.

(The Court) If you will point out to me any direct evidence on which this would be proper cross examination, I will be glad to reconsider my ruling.

You have him on cross examination. Now, if you can point out any evidence which would make this proper cross, I will reconsider my ruling. Otherwise, I think you must make him your witness.

By Mr. Doub:

Q. Did you ever hear Mr. Robinson—did Mr. Robinson ever say in your presence that he or Mr. Edlin had ever paid Mr. Robinson anything for his visits to the Department of Justice?

(Mr. Marion) Your Honor, I will object to this on the same premise.

(The Court) Are you making him your witness, Mr. Doub?

(Mr. Doub) This is another question. This does not relate to Mr. Edlin. As I understand your ruling as to Mr. Edlin, it was because Mr. Edlin's counsel objected to statements—

(The Court) If you will point out to me any evidence on direct examination of which this is proper [919] cross examination, you may certainly ask it in the form you have asked it.

If you can not point out anything on direct examination for which this is proper cross examination, I will still say that you have the right to ask the question but in asking it, you will be making him your witness.

(Mr. Doub) May I make a proffer at the Bench, Your Honor?

(The Court) Yes, sir.

(Bench Conference.)

[922] (The Court) The point is if he asks the question, then he opens up the conversations completely.

Now, that is a different point which is not presently being made. I do not know if Mr. Genn or Mr. Robinson are going to make the point.

[923] (Mr. Genn) I have already indicated this objection continues throughout.

(The Court) Are you objecting to this question?

(Mr. Genn) Yes, of course.

(The Court) Are you objecting to this question, Mr. Robinson?

(Mr. Robinson) No, sir.

(The Court) Mr. Robinson is not objecting to the question.

(Mr. Genn) I am objecting because Mr. Robinson was our attorney and agent and I think that includes him as well. That was the McCormick Rule.

(The Court) All right, if Mr. Edlin objects to this question being asked as being a communication from one of his attorneys to another attorney about a particular matter in which they were both engaged, I think you will have to sustain Mr. Edlin's objection.

(Mr. Williams) But, Your Honor, we have a situation—

(The Court) I think you have got to make it on the record.

(Mr. Genn) I have stated it to Your Honor.

(Mr. Williams) We have a situation here where [924] Mr. Robinson and Mr. Edlin are charged with being conspirators and charged in a criminal case. Is it reasonable that Mr. Edlin can seal Mr. Robinson's lips now with a claim of privilege when they are charged with breaking a criminal law in conspiring together and asserting his own defense.

(The Court) I will rule on this if you offer it as part of your case, but I still do not see that this is proper cross examination on anything that was said on direct. And since Mr. Genn is objecting to it, as well as the Government, I think that I must—I have to balance the equities in the thing and it seems to me that I should rule as I felt all along, that this is not proper cross examination but if it comes—if Mr. Robinson opens it up, that is a different matter.

(Mr. Williams) Judge, May I say one last thing, and then I will be quiet because I have not as much at stake in this as Mr. Doub has, but it seems to me, Your Honor, the thrust of Mr. Marion's direct examination of Mr. Caudle was to show viz-a-viz Johnson, that Johnson was very active for Mr. Edlin in relation to the indictment question and that he did a minuscule amount of legal work other than that which could be attributed to work on the indictment.

* * * * * *

[927] (Mr. Doub) I concur, of course, in the statement that Mr. Williams made on the record.

I would also like to point out that not only was Mr. Caudle interrogated about what was said at these meetings with Mr. Johnson, but he was also asked to testify that he knew of some meetings with the Justice Officials and I think, under those conditions, it is appropriate for me to follow that up and ask him the questions that have been asked.

(The Court) You ask him, Did Mr. Edlin ever admit paying Mr. Johnson that money?

(Mr. Doub) I did not say "admit."

(The Court) Well, that is the effect of it.

(Mr. Doub) No, because this is long before there was ever any charge.

(The Court) All right, did he say that, and if you ask him that, do you see any possible objection to Mr. Tydings'

asking him whether he also said anything to him about the checks and what the checks were for?

(Mr. Tydings) Did he know anything about the way Robinson was paying him, or know anything about those checks that went to him?

[928] (The Court) Did Mr. Robinson ever tell him what they were for? If you ask him whether or not he had been paid, doesn't that open up what he did say about that? If it opens it up, it opens it up only so far. I am trying to protect Mr. Genn and say there is not any waiver but that it would be limited only to the questions dealing with the specific points.

(Mr. Doub) Your Honor, you have persuaded me.

(Mr. Genn) Your Honor, there is just one thing further on this particular point.

I am put in this position. When an objection like this is made, I think it is unduly underscored by comments of the Attorneys and it makes it more prejudicial to this particular defendant. When they say I am entitled to ask that question or something of that nature.

(The Court) Mr. Doub is going to withdraw the objection. You will not have to make your objection in front of the jury.

(Mr. Genn) This is very difficult for me.

(The Court) I know it is.

(In open court.)

(The Court) You are withdrawing the question, Mr. Doub?

(Mr. Doub) Yes, sir.

[930] CROSS EXAMINATION

By Mr. Robinson:

Q. Just one or two, Mr. Caudle. As a matter of fact, in

Mr. Johnson's office at one of these two or three meetings that you have mentioned, did you not particularly advise Mr. Edlin in Mr. Johnson's presence that the seeking of a review was about as dangerous a move as he could make since, if his efforts were unsuccessful, he would have had to have given the government every possible defense that he had and that all that information would then be made available for the prosecution? A. Oh, yes, I am sure of that. I sure did.

Q. And is it a fact, sir, that your instructions in regard to the negotiations having to do with the purchase of the land and acquiring of mortgages having to do with Waldorf and of Virginia were no documents should have final approval and no negotiations should be completed without first consulting and getting the absolute approval of Mr. Johnson as chief counsel in all of those matters? A. I think that is correct, Mr. Robinson.

Q. You think it is correct, sir, or it is correct, sir? A. I am just sure it is correct. At least when I was here.

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[Tr. 953-958]:

RUSSELL O. HICKMAN

was called as a witness by and on behalf of the Government being first duly sworn, was examined and testified as follows:

(The Clerk) State your name for the record?

(The Witness) Russell O. Hickman, Whaleysville, Maryland.

(The Clerk) Russell O. Hickman.

DIRECT EXAMINATION

By Mr. Tydings:

Q. Mr. Hickman, where do you reside, sir? A. Whaleysville, Maryland.

Q. Which county is that? A. Worcester County.

Q. By whom are you employed? A. U. S. Finance Company, of Berlin.

Q. Who owns the U. S. Finance Company? A. Congressman Thomas F. Johnson.

Q. Are you a member of the Maryland Legislature? A. That is right.

Q. And you are serving in your third term as a delegate from Worcester County? A. That is right.

Q. And would it be a fair characterization to say that you were one of Congressman Johnson's political lieutenants on the Eastern Shore of Maryland? A. I have been very close to the Congressman for twenty-three years.

Q. All right. Now, directing your attention to the year 1960, Mr. Hickman, did you have occasion to act in any capacity for Congressman Johnson in his re-election campaign for the Congress of the United States? A. Yes, I did.

Q. And in what capacity was that? A. I was Treasurer of two testimonials, a testimonial luncheon held in Baltimore on July 19, 1960, and a testimonial dinner held at Ocean City, Maryland, on August 29, 1960.

Q. All right. Now, what did you do with the receipts which you received for the luncheon account; that is, the luncheon given for Congressman Johnson? A. Those receipts were deposited in my name as Russell O. Hickman, Dinner Treasurer, in the Calvin B. Taylor Banking Company, of Berlin, Maryland.

Q. What sort of records, if any, did you keep of your tour of duty as treasurer? A. Not too complete records. It was more or less an honorary position. I was on my honor, without bond. I had a duplicate of the deposit slips and the cancelled checks, of course, for each disbursement.

(Mr. Tydings) Mrs. Zielinsky, I will ask that these be marked.

(The Clerk) Government's Exhibit 88, marked for identification.

(Government's Exhibit No. 88 was marked for identification.)

(Mr. Tydings) I show them to the defendants as a photostatic copy.

By Mr. Tydings:

Q. Now, Mr. Hickman, I show you Government's Exhibit No. 88 for identification and ask you whether or not that is a duplicate deposit slip which you made in the course of your duties as treasurer for the Luncheon Committee for Congressman Johnson? A. That is right. It was deposited. Two checks were deposited, one for $50 and one for $500 on July 5, 1960.

Q. And is there any record on the deposit slip as to whether or not one of those checks was a check of W. L. Robinson? A. Yes.

Q. And how much was that check? A. That was $500.

Q. And do you recall how you received that check, Mr. Hickman, to the best of your recollection? A. Really, I couldn't tell you definitely. I have no record on that. Some of the checks were payable to me as treasurer, and some of them were payable directly to the Congressman, and he would endorse them over to me, "pay to the order of Russell O. Hickman, Treasurer." If they were payable to the Congressman, he would endorse them on the back, payable to me for deposit to my treasurer account.

(Mr. Tyding) I offer the next Government's Exhibit for identification.

(The Clerk) Government's Exhibit No. 89 marked for identification.

Government's Exhibit No. 89 was marked for identification.)

(Mr. Tydings) Your Honor, I ask that Government's Exhibit No. 88 be marked in evidence.

(The Clerk) Government's Exhibit No. 88 marked in evidence.

(Government's Exhibit No. 88 was received in evidence.)

(Mr. Tydings) Do you wish to see it now.

By Mr. Tydings:

Q. Mr. Hickman, I show you Government's Exhibit 89 for identification and ask you whether or not that is a record kept by you in the course of your duty as treasurer for Congressman Johnson's August 29th Dinner Committee? A. That is right. That was one deposit made from receipt from the August 29th dinner at Ocean City.

Q. That is a deposit slip for what bank? A. Calvin B. Taylor Banking Company, Berlin, Maryland.

Q. Can you tell from Government's Exhibit 89 whether or not there was a check deposited on that date from W. L. Robinson? A. There were a group of checks, a number of checks, and one check is identified W. L. Robinson in the amount of $300.

Q. What is the date of the deposit? A. November 7, 1960.

(The Court) When?

(The Witness) November 7, 1960.

I don't know whether the check was mailed to me directly. I have no knowledge whether it was mailed to me or whether it came in directly.

(Mr. Tydings) Thank you.

The Government will offer Government's Exhibit 89 for identification into evidence at this time.

(The Clerk) Government's Exhibit 89, marked in evidence.

(Government's Exhibit 89 was received.)

* * * * * *

[Tr. 962-966]:

CROSS EXAMINATION

By Mr. Doub:

Q. Now, I show you Government's Exhibit 88, being the deposit slip showing the deposit of the $500 check from Mr. Robinson payable to Mr. Johnson and endorsed by Mr. Johnson over to you. A. It could have been that way, or it could have been payable direct to me.

Q. As a matter of fact, Mr. Hickman, the check shows on its face that it was endorsed over to you, and then you endorsed it for deposit. A. There is a $50 check on there. It would have been likewise.

Q. Let me ask you this: The deposit slip dated July 5, 1960, shows that you deposited two checks on that day, one of C. P. McCormick, Sr., and one from W. L. Robinson, in your political account. A. That is right.

Q. Now, I want to ask you whether you handled the contribution for Mr. Robinson in the same way that you handled the McCormick check and all the other checks which you received.

(Mr. Tydings) Your Honor, I don't see how this is relevant or proper cross.

(The Court) The offer had already been in. I think the check was already in with the endorsement. Here the two checks are. I don't think it helps or hurts. It is immaterial. He simply deposited it, didn't he?

(The Witness) That is right. The McCormick check was handled the same way.

By Mr. Doub:

Q. That all went into the same bank account of yours, the political account? A. Yes.

Q. Tell us what you used the proceeds of these checks and all other checks that went into the political account for—what did you spend that money for? A. A number of things. The First Congressional District is the largest District in the area in the State of Maryland. While it is the smallest in population. The traveling expenses are terrific from district to district, county to county. It was spent, a lot of it, I think with about 23 or 24 weekly newspapers in the District and three or four dailies. Maybe it is 8 or 10 radio stations and one television station. Workers on the road distributing campaign materials, putting up posters and so on. Outdoor advertising. Billboards and the like.

Q. When you referred to television, you mean speeches made on TV? A. Yes.

Q. The cost of buying time on the station? A. Yes.

Q. And radio, you were referring to speeches over the radio and cost of time on that station? A. Speeches made over the radio and recorded spots. They were spotted several times daily.

Q. Now, Mr. Hickman, did not you also make contributions from that account to Democratic campaign committees in the various counties on the Eastern Shore?

By Mr. Doub:

Q. Mr. Hickman, who organized that campaign luncheon here in Baltimore City? A. That I could not answer directly, sir. My experience, I had nothing to do with ticket sales or distribution.

Q. Wasn't the promoter Mr. Guy Campbell? A. He and his son James. It is my recollection because there were a number of receipts turned over to me by Mr. James Campbell.

Q. You mentioned newspaper advertising. Strike that.

There were a number of—was all the money in the political accounts of yours spent solely for the candidacy of Mr. Johnson as a Democratic nominee for the Congress.

(Mr. Tydings) There are two of them. So I think we ought to know what we are talking about. One was for a luncheon before the Primary and another was for a dinner late in the summer.

By Mr. Doub:

Q. Either one. A. The only way I could answer it is combining the two because the money was spent for the same purposes. Not only for the campaign expenditures and promoting the campaign of Thomas F. Johnson for Congress but for Senator John F. Kennedy and Senator Johnson, Senator Lyndon B. Johnson for President and Vice President of United States, respectively.

* * * * * *

[Tr. 968-969]:

By Mr. Doub:

Q. Your deposit slip, Mr. Hickman, dated November 7, 1960, shows that you deposited on that day a number of checks including a $300 check of Mr. Robinson? A. Yes.

Q. And the proceedings of that check were treated in the same way for deposit purposes as all the others? A. The same manner.

Q. Now you had no understanding with Mr. Johnson that this $300 check or the June $500 check should be treated in any different way than any other campaign contributions, did you? A. Definitely not. No other understanding. It was to be treated the same way.

Q. Now, you talked with the FBI and later Mr. Tydings about Congressman Johnson, did you not? A. Right.

Q. Now, what was said at your first meeting with Mr. Tydings? A. I recall Mr. Tydings' resenting Congressman

Johnson's opposing him, his appointment for U. S. District Attorney and he said he remembered—

(Mr. Tydings) Your Honor, that is not proper. * * *

* * * * * *

[Tr. 1044-1046]:

FRANCES BROWN KIERNAN

a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Burnett:

Q. Where do you reside? A. 531 Pard Road, Washington 27, D. C.

Q. Do you know Congressman Thomas F. Johnson? A. Yes.

Q. Have you ever been employed by him? A. Yes.

Q. When were you employed by him? A. 1959, 1960, 1961 and 1962.

Q. Will you describe your duties while employed by Congressman Johnson? A. When I first went to work for Congressman Johnson I took his personal dictation and did some departmental work.

After a year and a half upon the resignation of Mrs. Myrtle Harris, I was more or less confined to departmental work solely.

Q. Do you know the defendants William L. Robinson and J. Kenneth Edlin? A. Yes.

Q. When did they first visit Congressman Johnson's office to the best of your recollection? A. 1960.

Q. What part of 1960 did they first enter Congressman Johnson's office? A. I am not aware of the exact date.

Q. Approximately, was it the first half or last half? A. Early spring.

Q. Early spring of 1960. A. Yes.

Q. How frequently did they visit the office in the early spring of 1960? A. Rather infrequently that spring.

Q. Now, did they visit the office of Congressman Johnson in the last half of 1960? A. Yes.

Q. How frequently did they visit the office during this period of time? A. Well, it was four years and I have to think back over the four years. As nearly as I can remember, as time went on, it was more frequent.

• • • • • •

[TR 1050-1051]

Q. Did you ever order any reprints of a June 30, 1960 speech? A. Yes.

Q. At whose directions did you order these? A. Mr. Buarque, the Congressman's assistant.

Q. These speeches? A. Yes.

Q. Do you recall when it was that you placed this order? A. No.

Q. Approximately? A. The speech was dated June 30, 1960. Is not that correct, sometime after that I do not know the date.

Q. Was it one order or two orders that you placed for reprints? A. Two orders.

Q. Do you know of any other orders for reprints of this speech? A. No.

(Mr. Burnett) The Government has no further questions at this time. You may cross examine.

CROSS EXAMINATION

By Mr. Doub:

Q. You have testified, Mrs. Kiernan, that you ordered the reprints of the speech from the Government Printing Office? A. Through the Congressional Record Clerk in the Capitol, yes.

Q. And you did that at the direction of Mr. Buarque? A. Yes.

Q. Now, is it not true that you did not discuss with Mr. Johnson the orders for those reprints before you put in those orders? A. No, I did not discuss it with Mr. Johnson, no, sir.

Q. And, as a matter of fact, is it not true that the first time you mentioned it to him was when you delivered to him a check of First Continental in payment of the reprints for endorsement over to the Government Printing Office? A. Yes.

Q. Is it not a fact that Mr. Buarque wrote the speech for Mr. Johnson or do you know? A. It is my understanding that Mr. Heflin and Mr. Buarque wrote the speech.

• • • • • •

[TR 1058-1060]

EARL KUNKEL

a witness having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Tydings:

Q. Mr. Kunkel, you reside in Silver Spring, Maryland? A. Correct.

Q. You are married and have six children? A. Yes, sir.

Q. You are now employed at the Housing and Home Finance Agency, is that correct? A. Yes.

Q. Directing your attention to the period of July, 1961 through November, 1961, where were you employed? A. I

was employed by the First Continental Savings and Loan Association.

Q. Whereabouts, Mr. Kunkel? A. 514 Wisconsin Avenue.

Q. And that is in Chevy Chase, Maryland? A. Correct.

Q. And in what capacity were you employed? A. Executive Vice President.

Q. Would you just describe to the ladies and gentlemen of the jury generally your responsibilities as executive vice president of the First Continental Savings and Loan Association? A. I think the best way to described it was the day-to-day operations and basically as office manager.

Q. You were in charge of the day-to-day operations of the Association? A. Yes.

Q. By whom were you employed or hired? A. W. L. Robinson.

Q. Was it necessary for anyone to approve your employment? A. I believe so.

Q. Who was that individual? A. J. Kenneth Edlin.

Q. And officially what relationship did Mr. Robinson have with the First Continental Savings and Loan Association? A. Officially he was the underwriter and consultant.

Q. Mr. Robinson now? A. I am sorry. Mr. Robinson at that time, I believe, was vice president and counsel.

Q. And what relationship if any did Mr. Edlin have with the First Continental Savings and Loan Association? A. He was the underwriter or consultant to the Association.

Q. What was the relationship between Mr. Robinson and Mr. Edlin at that time in so far as their activities with the Association were concerned and in so far as you know? A. Mr. Robinson was Mr. Edlin's attorney and was with him constantly.

Q. Now, at the time you came to work for the First Continental Savings and Loan Association in July, 1960, do you recall who the president of the Association was? A. Louis D. Goldman.

• • • • • •

[TR 1065-1068]

By Mr. Tydings:

Q. Now, Mr. Kunkel, directing your attention to the period July and August of 1960 when you first were employed at the First Continental, did you have occasion to become aware of the delivery of any speeches to the Association which had been made by Congressman Johnson? A. Yes.

Q. And what were those circumstances? A. The delivery entrance to the Association was at the lower level in the rear. I had to go downstairs for some reason or other, I do not know, and I happened to see a mail truck backed up to the back. Asked some one what the heck was going on, what were they bringing.

Q. Did you observe yourself what they were bringing? A. Yes. There were a number of cartons of speeches of Congressman Johnson's.

Q. And was this the speech of June 30, 1960 which dealt with the savings and loan commercial insurance? A. Yes, sir.

Q. Now, during the course of your duties as executive vice president, do you know whether or not any copies of these speeches were used in solicitation efforts to—

(The Court) You say speeches. Copies of these speeches.

(Mr. Tydings) Copies of the daily record recording of Congressman Johnson's speech. The daily record reprints.

(The Witness) Reprints.

By Mr. Tydings:

Q. Do you know whether or not any of these reprints were used in solicitation of deposits? A. The Congressman's speech was used normally in answer to particular inquiries when people were asking whether or not we had FSLIC Insurance and in this instance, we would have a particular letter that we would use which enclosed with it a copy of the Congressman's speech.

Q. Also, did you have occasion during your duties as executive vice president to observe whether or not any of these reprints were underlined or had sections of the speech underlined or underscored in red? A. Yes, they were.

Q. And what were those circumstances, and why? A. The purpose was to call attention to what we consider the pertinent and more meaty part of the speech.

Q. Pertinent in regard to what? A. To our point of view.

Q. To your point of view? A. Point of view, the fact of an independent association as against the Associations having FSLIC insurance.

(Mr. Tydings) I mark this for identification, please.

(The Clerk) Government exhibit 91 marked for identification.

(Mr. Doub) Your Honor, I would like to point out—

(The Court) It has just been shown to you at the moment.

Mr. Tydings has not done anything except mark it for identification. It has not been offered yet.

He is just showing you something in advance.

(Government exhibit 91 marked for identification.)

(Mr. Tydings) I intend to show it to the witness now, Your Honor.

(The Court) All right.

By Mr. Tydings:

Q. Mr. Kunkel, I show you Government exhibit 91 for identification which has an additional marking in the upper right hand corner. Is it all right to read that? It is an additional means of identification for the record.

(The Court) Is there any objection?

(Mr. Doub) There is no objection provided Your Honor will permit me to say that this is an ordered reprint of the speech and it is an accurate reproduction of the content of Mr. Johnson's speech except that it has a heading at the top which is not in the Congressional Record, itself, where the speech was reproduced.

(The Court) You mean what would be the headline here was not?

(Mr. Doub) Yes, Your Honor.

(The Court) The rest of it is a correct copy from the Congressional record except these two lines beginning "Federal Savings and Loan League".

(Mr. Doub) That is right.

* * * * * *

[TR 1069-1072]

By Mr. Tydings:

Q. Now, Mr. Kunkel, there are certain areas which are outlined in red. Why were these areas outlined in red? A. Because, in our opinion these were the points most pertinent to what we were trying to put across and for ease in the person's reading it.

In other words, this is very small print and for ease in calling attention to the more important, what we considered more important points in the speech.

(The Court) I think it would be helpful also to let the jury see the headline to which Mr. Doub referred.

(Mr. Tydings) The headline to which Mr. Doub referred which was not a part of the official Congressional record is "Federal Savings and Loan League Seek Destruction of Competitive Independents and Commercial Mortgage Insurance." And the areas are outlined in red as described by Mr. Kunkel.

If Your Honor please, I will give this to the jury at this time.

(The Court) Is there objection? It is now being offered, you say?

(The Clerk) It is marked in evidence.

By Mr. Tydings:

Q. Now, Mr. Kunkel, you described a type of letter which was used to answer inquiries about Federal Insurance, and a type of letter to which a copy of the Congressional Record Reprint of Congressman Johnson's speech was attached. I show you Government exhibit 49 for identification and ask you whether or not that is the type of form letter and the copy of the speech to which you refered in your testimony? A. Yes, sir, this is what we referred to as the Johnson letter.

Q. And if you turn to the second page, I note that the place for the signature has Earl Kunkel, is that yours? A. Yes, sir.

(Mr. Tydings) We will now offer Government exhibit 49 as evidence in this case, Your Honor.

(Mr. Williams) Your Honor, I wonder if you would ask Mr. Tydings if he would fix in point of time the preparation of this letter if this witness knows.

By Mr. Tydings:

Q. Mr. Kunkel, if you know, during what period of time was this form letter and the attached speech used by the First Continental Savings and Loan Association?

(Mr. Williams) I was concerned about the date of preparation, Mr. Tydings.

By Mr. Tydings:

Q. To the best of your knowledge the date of the preparation? A. It would have been in the latter part of July of 1960.

Q. And one other question in that connection, Mr. Kunkel. Who would have to give final approval to the form of any such letter such as that? A. That is a requirement of the Association that all letters going to, any information going to the general public would have to be initialed by the Attorney, W. L. Robinson.

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[TR 1073-1078]

By Mr. Tydings:

Q. Was this the actual form of letter used? A. Yes, sir, it was.

Q. And to whom was it sent, this form? A. This letter was sent in answer to people that were asking why we did not have, or rather, why our accounts were not insured by the Federal Savings and Loan Insurance Corporation.

Q. And again, Mr. Kunkel, during this period generally, to the best of your knowledge, was this letter or this form of letter used? A. That particular letter to the best of my recollection was used in the latter part of July and possibly August.

Q. Of 1960? A. Yes.

(The Clerk) I would like to mark that in evidence.

(The Court) I did not quite get that. How long was it?

(The Witness) July to August.

(The Court) Two months?

(The Clerk) Government exhibit 49 marked in evidence.

(Government exhibit 49 marked in evidence.)

(The Court) You say this particular letter was used for two months?

(The Witness) Yes, sir.

(Mr. Genn) The difficulty I am at, Your Honor, I do not want to clutter up the record. This seems to be a rough draft. If the Court will examine it, you can see that it was not this particular letter that was sent out.

(The Court) That is why I asked the witness. He said it was.

By Mr. Tydings:

Q. Mr. Kunkel, let me show you government exhibit 49. That is a draft of a form of letter to be used. Is that correct, in response to these inquiries? A. Yes, sir. This letter by looking at it, I think it is obvious to me that this was prepared by the girls to be used as a master copy in answering the particular letters which they received.

Q. How can you tell that, Mr. Kunkel? A. Looking here at the "E. K." which were my initials, "colon," and then your initials. Naturally this would mean to the girls, they would put their initials. These were instructions to the girls.

Q. All right, now on the first page of the exhibit 49 there appears to be a red crayon or red marking on some of the lettering. Do you know who made that, Mr. Kunkel? A. I do not.

(Mr. Tydings) I will read the entire contents of the exhibit except the attached speech.

Ladies and gentlemen of the jury, Government Exhibit 49 reads as follows:

(The Court) Has it been offered in evidence?

(Mr. Tydings) Yes, it has been offered and marked in evidence.

(The Clerk) Yes.

Mr. Tydings: (Reading)

"Example of letter to be sent on information on St. Lawrence Insurance Company: Not to be typed in all capitals but I have it for ease in typing from this example:

"EXAMPLE

"Thank you for your —(fill in appropriately)——, and it is a pleasure to advise you that to provide protection for the funds of its savers, First Continental has insured its mortgages with St. Lawrence Insurance Company, 4849 North Western Avenue, Chicago 25, Illinois. This company is under the supervision of the Insurance Commissioner of the State of Illinois. The assets of a savings and loan association are chiefly mortgages, cash and Government bonds, with mortgages comprising the major share. The only possible loss of these assets would be by reason of default of one or more of the mortgages. By insuring our mortgages as to principal, interest and foreclosure costs, if any, we have eliminated this possibility of loss and protected the funds of our savers which are invested in these insured mortgages.

"End of first paragraph

"The type of advertising used by so-called 'Federally insured' associations has apparently misled you, like millions of others, into believing that their accounts are insured or guaranteed up to $10,000 by the United States Government itself. This is completely incorrect. The Federal Savings and Loan Insurance Corporation is not empowered to obligate the Federal Government. Although that corporation allegedly insures the accounts of many associations, its total assets are less than 1% of the accounts claimed to be 'insured to $10,000.'

"End of Second Paragraph.

"As verification, we enclose a copy of a speech by The Honorable Thomas F. Johnson, one of Maryland's Con-

gressmen, made from the floor of the House of Representatives on June 30, 1960. He quotes from a speech made on May 19, 1960, by The Honorable Cecil B. King, one of California's Representatives, in which Congressman King declared that the Federal Savings and Loan Insurance Corporation is riding on the coattail of Government to give the public confidence, a false confidence, under its present management.

"End of Third Paragraph

"If you have any further questions, please do not hesitate to call on us.

"End of fourth paragraph

"Sincerely,

"Earl Kunkel

Executive Vice President

"EK: your initials

"Enc. do not forget to enclose a copy of Congressman Johnson's speech!"

Then attached thereto is a Congressional Record copy of Congressman Johnson's speech.

• • • • • •

(Vol. 13 [1084]) Q. And do you recall Mr. Robinson's comments to you about the status or what was happening about the indictment—the substance of what Mr. Robinson told you, what Mr. Robinson advised you? A. The substance of what Mr. Robinson advised me was that he doubted that the case would ever come to trial. He also advised me that they were in a position to bring their story to the attention of the top echelon of the Department of Justice.

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[1120] (Mr. Doub) Q. Now, the general counsel of First Continental was Mr. William Robinson, was he not? A. Yes.

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[1121] Q. Now, who would be most familiar with the legal services rendered by any lawyer for First Continental? Would it be you or would it be Mr. Robinson as general counsel? A. Mr. Robinson.

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(Vol. 14 [1190]) Thereupon—

WILFRED W. BUTSCHKY

a witness, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your name for the record.

(The Witness) Wilfred W. Butschky.

(The Clerk) Spell your last name.

(The Witness) B-u-t-s-c-h-k-y.

DIRECT EXAMINATION

By Mr. Burnett:

Q. What is your occupation? A. I am the Clerk of the United States District Court for the District of Maryland.

Q. Do you have custody and responsibility for the official records of this Court? A. I do.

Q. Did you bring with you any records of this Court? A. Yes, I did.

Q. Do you have File 25038?

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[1196] By Mr. Burnett:

Q. Who were the parties to that indictment? A. The case is entitled "U.S. of America vs. J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., a Maryland Corporation, [1197] Rosabelle Edlin and Jackson D. Rains.

Q. When was that indictment returned? A. November 17, 1959.

Q. From what date to what date was that indictment pending before this Court? A. From the date it was filed on November 17, 1959 until—

(The Court) Just give us the date.

(The Witness) Yes, sir.
—June 5, 1962.

By Mr. Burnett:

Q. And who was the attorney of record for J. Kenneth Edlin? A. The appearance of G. C. A. Anderson, Esquire, was entered on behalf of the defendant J. Kenneth Edlin on December 4, 1959.

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(At the Bench)

[1198-A] (The Court) What is the purpose of offering the disposition?

(Mr. Tydings) The relevancy of the disposition sheet, if Your Honor please, is that it occurs within the indictment period. It shows what happened to the indictment and it shows and it goes to show also the bad faith of the defendants in this case.

(Mr. Williams) December 31, 1961.

(Mr. Genn) It is beyond the period.

(Mr. Tydings) But the nolo contendere period [1199] was in December.

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[1200] (In open court.)

(The Court) Mr. Butschky, did Thomas F. Johnson enter his appearance on behalf of any defendant in case No. 25038?

(The Witness) From an examination of the records [1201] in the case, it does not appear that such an appearance entry was made.

(The Court) The answer is no?

(The Witness) No.

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[1202] (At the bench.)

(The Court) If the defendants prove the disposition in this case, they will be entitled to bring in the disposition of the other.

(Mr. Doub) Certainly.

(Mr. Genn) I have objected to this and if [1203] the defendants bring it out, the difficulty is that if I have to object in public constantly about this before the jury, that is almost as prejudicial as the evidence being in.

(The Court) I cannot help it, Mr. Genn. How can I sustain your objection, if the other defendants want to show, they will have to show what they want. The purpose they want it. I do not see any unreasonable prejudice.

I will have to rule on the questions as they come out. I am not going to let the government prove anything more at this time.

(Mr. Tydings) What about the technical superseding indictment, Your Honor? Certainly—so the jury will have it even if you explain it to them without the disposition, just the technical aspects.

(Mr. Williams) No, I do not want the Court to explain.

(Mr. Tydings) Let us put it in then.

(The Court) You want to put in the superseding indictment?

(Mr. Genn) I will object to that, Your Honor.

(The Court) You can object to it.

(In open court.)

[1204] By Mr. Burnett:

Q. Do you have with you a second file? A. Yes.

Q. Does that file contain an indictment? A. Yes.

Q. What is the pleading on that indictment? A. The pleading is No. 1.

Q. And in what case?

(The Court) Give the case number.

By Mr. Burnett:

Q. What is the case number? A. No. 25759, Criminal.

(Mr. Doub) What was that number?

(The Witness) 25759, Criminal.

By Mr. Burnett:

Q. And what is the date of the indictment? A. The indictment was returned on November 7, 1961.

(Mr. Williams) November 7, was that, Mr. Butschky?

(The Witness) Yes.

By Mr. Burnett:

Q. What was the date of arraignment on that indictment?

(Mr. Genn) If the Court please, I made an objection to this entire—

(The Court) Then I said I would rule on the [1205] questions as they came up. Do you object?

(Mr. Genn) Yes.

(The Court) I sustain your objection at this time.

(Mr. Tydings) Will you allow us to tie it in later on why it is material and relevant?

(The Court) I will rule on questions as they come up.

(Mr. Burnett) Who are the parties in the second indictment?

(The Court) Objection sustained. I instruct you not to ask any more questions along that line at this time.

By Mr. Burnett:

Q. What is the difference between the indictment in 25759—

(Mr. Genn) Objection.

(The Court) Sustained. I instructed you not to ask any more questions along that line. If you ask it again, I will deny your privilege of practicing before this Court and leave the case to some attorneys who will follow my instructions.

(Mr. Tydings) It was my error, not Mr. Burnett's.

(The Court) All I made clear was that the defendants proposed to ask certain questions and I ruled [1206] on them as they came up and I was going to limit the government to the proof of its indictment.

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[1207] By Mr. Doub:

Q. Referring to this indictment which Mr. Butschky testified was returned November 17, 1959, you said that it was pending until June 5, 1962.

Now, what was the disposition of that case?

(Mr. Genn) I am going to object, if the Court please, for the reasons I have stated already on the record.

(The Court) Overruled.

(The Witness) The docket entry shows that on June 5, 1962, the petition of the United States of America to dismiss the indictment herein pursuant to Rule 48 (a) of the Federal Rules of criminal procedure order of Judge Watkins granting leave as prayed.

By Mr. Doub:

Q. Was that as to all the defendants in that case?

(Mr. Genn) Same objection to this line of interrogation, Your Honor.

(The Court) Overruled.

(The Witness) The order for dismissal reads as follows:

> "Pursuant to Rule 48 (a) of the Federal Rules of Criminal Procedure and by leave of the Court endorsed hereon the United States Attorney [1208] for the District of Maryland hereby dismisses the indictment against J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., Rosabelle Edlin and Jackson D. Rains, Defendants."

Your Honor, there is another line here.

(The Court) Let me see it.

All right. Read the whole thing.

(The Witness) Brackets. "(Superseding Indictment received against same defendants in criminal 25759."

Signed "Joseph D. Tydings,

"United States Attorney."

"Leave of Court is granted for the filing of the foregoing dismissal.

"R. Dorsey Watkins, U. S. District Judge, dated June 5, 1962."

By Mr. Doub:

Q. Now, what is the date of the indictment in No. 25759, criminal? A. That indictment was returned on November 7, 1961.

Q. Does your file indicate why the first indictment was dismissed?

(Mr. Genn) If the Court please, I do not want to keep repeating the objection.

[1209] (The Court) He just read the order.

(Mr. Doub) The order did not show why it was dismissed.

(The Court) I think that the order says, the order, I think, speaks for itself, that he has just read it to the jury.

(Mr. Doub) Very well.

(The Court) You may argue. Anybody may argue it.

(Mr. Doub) I think Your Honor is correct. I agree with that. I think that is all.

Oh, let me ask you this:

By Mr. Doub:

Q. What was the disposition of the second indictment?

(Mr. Genn) Same objection.

(The Court) Well, there is already in the case statements with respect thereto and testimony with respect there to since this would simply make clear what the Court record is with respect to what certain witnesses testified. I think that for that reason, among others, it is admissible.

Go ahead.

(The Witness) The entry in the second case 25759—

(The Court) He asked what the disposition was. It is not the entry. The question is—probably, if you will [1210] let me see the entry and let me see the judgments, I think the question—well, I think we ought to see whether everyone agrees that the entry is sufficient or whether the whole judgment should be written.

Counsel may come to the Bench.

(At the Bench.)

(The Court) The disposition of the case is where the judgment against Edlin—Edlin pleaded not guilty. These

are the essential things whether it is this and this or whether the judgment should be read.

I questioned whether you wished to read the entire judgment. Do you wish to read the entire judgment or merely to read the docket entry. You may have either one.

(Mr. Genn) I object to any of this. This is highly prejudicial.

(Mr. Doub) I do not think you should put in the sentence, now, Your Honor.

(The Court) You asked the question.

(Mr. Doub) What I was talking about was, was he convicted or what the plea was.

(Mr. Williams) May I see it, Your Honor?

(The Court) Here it is. Mr. Doub asked the question and he has a right to ask it.

[1211] (Mr. Doub) I am not sure that the sentence is relevant. I am not sure.

(Mr. Williams) You asked the question.

(The Court) Mr. Doub asked the question of what the disposition was.

(Mr. Genn) And I have objected to this as prejudicial.

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[1212] (The Court) I think Mr. Tydings can offer or someone can offer 97 for identification and say they are identical except the word "knowingly" has been added.

(Mr. Tydings) That is what we had planned to do.

(The Court) I want to keep it as minimized for you. I cannot help it if Mr. Doub asks questions.

(Mr. Genn) It is prejudicial to this defendant, though, Your Honor. We have to treat this as four separate cases for the purposes of the rules.

(Mr. Tydings) We are going to object to Mr. Doub's asking that question. If he wants the entire thing read, we would be willing to have the disposition what it was, period, but not the entire page. Just the sentence.

(Mr. Marion) The change of plea and the entry of the plea but not the sentence.

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[1213] (The Court) Mr. Genn has asked for a continuing objection during the examination of Mr. Butschky to any and all further references to any of the papers contained in file 25038 or 25759. The Court will grant a continuing objection to Mr. Genn with respect to any further questions asked of Mr. Butschky with respect to the contents of those files without his need to renew it . . . .

(The jury is not present.)

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[1216] (The Court) The Court is interested in finding out if Mr. Genn cares whether the sentence is put in, I can see how you might prefer it, either way. That is why I am asking the question.

(Mr. Williams) He is going to object anyway.

(The Court) Of course, he has been objecting. He is not waiving his objection. The other defendants have said that in addition to the change of plea from not guilty to nolo contendere, they wish to show what the sentence was in a brief way.

The Government is suggesting that the fact of the plea be entered and the sentence be [1217] not entered. I can see from your point of view you might prefer it either way; because of the arguments Mr. Williams suggested off the record, I would like to know—without your waiving any point, whether you want it to be only the pleadings or, if I am going to give the pleading, whether you would also rather have the sentence.

(Mr. Genn) At this point my preference would be not to have anything further mentioned than necessary.

(The Court) All right.

(Mr. Williams) Your Honor, then, if Mr. Genn's position is that, I have to take a position of necessity. I am sorry. But Your Honor, I think we must have the sentence brought out by reason of this fact. We have now evidence of a superseding indictment; we must clarify the disposition of that.

Now, Your Honor has told the jury on one occasion at least, that in nolo contendere pleas, that is neither an admission of guilt nor a conviction. I am sorry to say I disagree with Your Honor on that.

* * * * * *

[1218] (The Court) Bring the jury in.

(The jury returned to the courtroom.)

(The Court) Do you take the same position, Mr. Williams takes, Mr. Doub?

(Mr. Doub) I do, Your Honor.

(The Court) Do you take the same position, Mr. Robinson?

(Mr. Robinson) I do.

(The Court) The three defendants all take the same position.

Following the conference at the bench, and reserving to any persons any points that they may have made, the Court is going to ask a question of Mr. Butschky which will embody what the Court held to be admissible and Mr. Butschky, you have produced here criminal file No. 25759, containing an indictment which has been referred to as the superseding [1219] indictment.

Will you give to Mrs. Zielinski the indictment in 25759 so that it may be marked Government Exhibit 97-A in evidence.

(The Clerk) We do not have a 97.

(The Court) Yes, the file. 25759 is government exhibit 97 for identification and government exhibit 97-A is the indictment in that case. The differences between the indictment will be explained to you later.

Mr. Butschky, does your record show that the defendants in the second indictment J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Inc., a Maryland Corporation, Rosabelle Edlin and Jackson D. Rains?

(The Witness) Yes, sir.

* * * * * *

[1220] (The Court) Those who were arraigned entered pleas of not guilty?

(The Witness) Yes, sir.

(The Court) Then do your records show that Mr. J. Kenneth Edlin changed his plea from not guilty to nolo contendere?

(The Witness) Yes, sir.

(The Court) On what date?

(The Witness) December 8, 1961.

(The Court) And that plea was accepted by the Court?

(The Witness) Yes.

(The Court) And that on that plea Mr. Edlin was sentenced to six months in prison, to probation for two years thereafter, and to a fine of $8,000.

(The Witness) Yes, sir.

* * * * * *

[1221] (Mr. Doub) Could I ask one question, Your Honor, what was the date of the dismissal of the case?

[1222] (The Witness) This present case.

(The Court) That is 25759.

(The Witness) Yes, sir. June 5, 1962.

(The Court) All right.

The entire file is to be marked for identification and the indictment is to be marked for identification as 97-A.

(Mr. Tydings) One more question, Your Honor.

Mr. Butschky, the date that Mr. Edlin was sentenced, would you put that in the record, also, please?

(The Court) He changed his plea on December 8, 1961.

(The Witness) Yes, sir.

(The Court) And the pre-sentence report was requested and the judgment and commitment order were April 13, 1962.

(Mr. Tydings) Thank you.

(The Court) Exceptions granted to Mr. Genn.

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(Vol. 15 [1401-A]) Thereupon

HARRY B. WOLF, JR.

a witness, being first duly sworn, was examined and testified as follows:

(The Clerk) State your name.

(The Witness) Harry B. Wolf, Jr.

DIRECT EXAMINATION

By Mr. Weiner:

Q. Mr. Wolf, could you give us your occupation, please? [1402] A. Director of the Department of Savings and Loan, State of Maryland.

(The Court) And a member of the Bar?

(The Witness) Yes, sir.

By Mr. Weiner:

Q. Can you tell us whether or not you hold any position with respect to First Colony Savings and Loan Association? A. I am the receiver.

Q. You are the receiver. And when and by whom were you appointed Receiver of First Colony? A. Appointed December 18, 1962 by the Circuit Court for Cecil County in Maryland.

Q. And can you tell us whether you have any duties with respect to the records of First Colony? A. As receiver I am charged with the custody and control of these records.

(Mr. Weiner) Your Honor, I have four records I would like to have the witness identify at this time. . . .

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[1423] Thereupon,—

LOUIS D. GOLDMAN

was called as a witness by and on behaf of the Government, being first duly sworn, was examined and testified as follows:

(The Clerk) State your name for the record.

(The Witness) Louis D. Goldman.

(The Clerk) How do you spell Louis?

(The Witness) L-o-u-i-s.

(The Clerk) Louis D. Goldman. Take the stand, please.

DIRECT EXAMINATION

[1424] By Mr. Marion:

Q. Mr. Goldman, I think if you will pull the microphone in a little closer and keep your voice up.

Where do you live, Mr. Goldman A. 1605 Bay Road, Miami Beach, Florida.

* * * * * *

Q. And are you also an attorney, Mr. Goldman? A. Yes, sir.

Q. And where are you admitted to practice? A. I am admitted to practice in the State of New York, United States District Courts for the Southern and Eastern Districts of New York, and the Supreme Court of the United States.

* * * * * *

[1426] Q. And were you thereafter due to be admitted to practice law in the State of Florida? A. Yes, sir.

Q. On what date were you due to be admitted? A. June 1, 1962.

Q. And you were admitted to practice on that date? A. No.

Q. And why were you not admitted to practice at that date? A. I was indicted in Montgomery County.

Q. In Montgomery County, Maryland. A. Yes, sir.

Q. Were you indicted alone or were others with you? A. Three others.

Q. And in connection with the operation of any particular company or corporation? A. First Continental Savings and Loan.

* * * * * *

[1427] Q. Did there come a time when you, yourself, went to work for Mr. Edlin? A. Yes, January of 1960 I started my employment with Mr. Edlin at the First Continental Mortgage Corporation.

Q. By whom were you hired? A. Mr. Edlin.

* * * * * *

[1428] By Mr. Marion:

Q. Now, up to that time in January, 1960, Mr. Goldman, had you had an opportunity to meet Mr. William L. Robinson? A. I met him in December of 1959.

Q. And who was he, to your knowledge? A. Attorney for Mr. Edlin for his various enterprises and he was with him more or less constantly.

* * * * * *

[1433] Q. Now, Mr. Goldman, did there ever come a time when you were named as an officer of First Continental Savings and Loan Association? A. Yes, in April of 1960, Mr. Edlin said [1434] that I was to be the president of First Continental Savings and Loan, Mr. Robinson would be the vice president, and Mrs. Edlin would be secretary-treasurer.

Q. Was this to be on a permanent or temporary basis? A. A temporary basis. Mr. Edlin stated that he would obtain a man who was known in the field or as we would term it "a big name" to replace the office of president and perhaps that of vice president.

I was only there on a temporary basis as the president.

Q. Now, for how long a period of time after April, 1960 did you remain temporarily as president of First Continental? A. Until I resigned on December 14, 1961.

Q. A period of over a year and a half? A. Yes.

* * * * * *

[1438] Q. Did there come a time thereafter when you did have occasion to meet Congressman Johnson in person? A. Yes, sir, I met him in the early part of 1961 at his apartment at the Fairfax Hotel in Washington, D. C.

Q. And at whose suggestion or direction did you meet him at that time? A. I went there with Mr. Edlin and Mr. Robinson.

Q. Did you have any prior conversation with either Mr. Edlin or Mr. Robinson as to the reason for that visit?

A. Yes, prior to going to the Fairfax Hotel, we were still at the Woodner in Washington, and getting ready to go—Mr. Edlin told me that he wanted me to prepare an affidavit stating that a certain conversation, about April, 1960 with Mr. Drano, that Mr. Drano had stated that [1439] he was acting on behalf of Jimmy Hoffa of the Teamsters Union.

Q. Let us back up a minute. A. Yes.

Q. You say a conversation which had taken place in April of 1960? A. Yes.

Q. What did that conversation deal with, in April of 1960, if you know? A. Well, the conversation in April of 1960 dealt with a loan that Mr. Drano was attempting to make from First Colony with reference to some property at Sun Valley in Florida.

Q. Who was present at that discussion in April of 1960? A. Mr. Drano, Mr. Edlin, Mr. Robinson and I.

Q. At that time was there any mention made of the name of Jimmy Hoffa? A. No.

Q. Did that discussion in April result in any later transaction involving First Continental? A. Well, yes, in June of 1960, First Continental Savings and Loan purchased a treasury note of $100,000 from Mr. Drano for $80,000.

Q. It had a face value of $100,000?

* * * * * *

[1440] Q. What was it that Mr. Edlin told you he wanted you to put in an affidavit before you went to see Congressman Johnson? A. In April then of 1960 Mr. Drano had made mention of the fact he was acting for Mr. Hoffa of the Teamsters Union.

Q. Did you make such an affidavit? A. I refused to do that.

Q. Why? A. Because it was not true.

Q. What, then, did Mr. Edlin ask you to do if anything? A. Then Mr. Edlin told me that he wanted me to tell Con-

gressman Johnson that Mr. Hoffa was involved in that Mr. Drano had mentioned the fact Mr. Hoffa was the one for whom he was acting. I refused to do that.

Q. Did Mr. Edlin tell you why he wanted you to [1441] tell that to Congressman Johnson? A. He mentioned something to the effect that the Congressman would speak with someone who was close to Mr. Hoffa and thereby might be able to do something about getting the one hundred thousand dollars back for the association.

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(Mr. Genn) If the Court please, may we approach the Bench?

(The Court) Yes.

(At the Bench.)

(Mr. Genn) First of all, Your Honor, this testimony thus far is highly prejudicial. I do not know as to its materiality in this case but this is one more notch in the question of nailing this to a bad-man case. That is all that this is bringing out. Whatever probative value it may or may not have, that is it. I object and move for a mistrial because it is sought to bring out, and it can lead to [1442] further prejudicial information if the Government pursues this. Because there is some evidence I understand somewhere along the line that this is supposed to have been a stolen treasury bond. That is the contention.

I believe, Your Honor, that it has been highly prejudicial and I do not see its materiality. But in any event, it is not bringing this defendant a fair trial.

(The Court) What is the relevancy and materiality of the evidence, Mr. Tydings?

(Mr. Genn) Could we make this quietly?

(In open court.)

(The Court) Will the jury retire. I think there has been a request that we discuss certain matters and I think that it

is very difficult to discuss them without voices carrying as far as the jury so I think you had better retire at this moment.

(The jury retired from the court room and the Bench conference continued as follows:)

(Mr. Tydings) Your Honor, the Government proffers that this witness will testify that when he went in Mr. Edlin took him in to see Congressman Johnson, that he refused and he did not [1443] tell Congressman Johnson that Mr. Drano was acting for Hoffa at that meeting.

The Government also proffers to show that later on both Congressman Johnson and Congressman Boykin went to the Department of Justice and told Officials there that Mr. Drano had been acting for Mr. Hoffa and that Mr. Edlin could be an important witness for them and they asked him to look into the area of Mr. Edlin's possible cooperation in connection with the investigation in Florida. We think this is relevant because it shows that the actual story which was told the Department of Justice was not entirely what it should have been and that the principals involved knew it.

(The Court) Well, suppose that was so, how does it tie in with the conspiracy in this case?

(Mr. Marion) It is one of the inducements.

(The Court) You say this is in effect; in effect you say this is an act in furtherance of the conspiracy.

(Mr. Tydings) Yes, Your Honor.

(The Court) An act engaged in by Boykin and Johnson at the suggestion of Edlin with or without [1444] Boykin or Johnson knowing that it was untrue but that it was something that Edlin was trying to get Boykin and Johnson to say to the Department of Justice as sort of a quid quo pro for dismissing the indictment against Edlin.

Well, if so, it might be an act in furtherance of the conspiracy even though it has not been mentioned in the indictment. The Government is not limited in proving a con-

spiracy to—it seems to me to be very minor as compared to the possible confusion of the issues along the lines that Mr. Edlin has spoken of. How far does the Government intend to go in it?

(Mr. Tydings) No further.

(Mr. Marion) We are going to ask him what he told Mr. Johnson.

(Mr. Genn) I think this is a violation. As I have said earlier, this is highly prejudicial.

(The Court) If you represent a man who will do things like that as part of his effort to get Congressmen to persuade the Department of Justice to drop an indictment against him, I do not see that you have any right to complain about it. If this was an act which your man instigated and suggested and which was carried out, either knowingly or unknowingly [1445] by Johnson and Boykin as in furtherance of the conspiracy.

(Mr. Robinson) If I may interrupt for a moment, sir. The testimony of this witness is so far as it has gone to this time was that the purpose of this discussion was to have Mr. Johnson act in a capacity to assist the association to recover money and for no other purpose.

Now, I will say I intend to cross examine on the particular point as to Congressman Johnson's services in that regard.

(The Court) Certainly, you can do it. The witness has not yet said what Mr. Tydings has indicated he expected to prove.

(Mr. Tydings) We did not mean to get off quite so far on that. We will get right to the heart of it.

(Mr. Genn) The point I am trying to make for the record on this is that the import certainly of what this witness has said is in effect that Mr. Edlin is a liar and I think that that is what you end up with in this situation because he said he did not sign the affidavit.

Now, what significance would it be in [1446] the case except to show that he has a bad character as far as his statements are concerned? It does not add anything.

(The Court) Up to the point as to which evidence has so far been offered, You might have a good point, Mr. Genn, but if the Government succeeds in following it up as they say they propose to do by showing that Mr. Johnson and Mr. Boykin did make these representations, then it ties in as an act in furtherance of the conspiracy.

If the proposed representation is untrue, it does not make it any less an act in furtherance of the conspiracy.

(Mr. Williams) Your Honor, I think—speaking for Boykin, before I can state a position on this, it becomes important to know whether the Government's theory is that Mr. Johnson and Mr. Boykin were misled by this and thereafter misled the Department officials or whether they were knowing conduits of mis-information to the Department.

I gather from what counsel for the Government have said that this line of proof is to show, if it goes through to its normal conclusion, that Mr. Johnson was misled at this conversation, is that right?

[1447] (Mr. Marion) Mr. Johnson was advised of what the facts were and he went to the Department and held out Mr. Edlin's alleged ability to—

(The Court) In spite of knowing.

(Mr. Marion) In spite of knowing what Mr. Goldman told him. He went ahead and used Mr. Hoffa through Mr. Edlin as bait for the Department of Justice.

* * * * * *

[1451] Go ahead.

By Mr. Marion:

Q. Now, Mr. Goldman, at the time you first met Mr. Johnson in early 1961, did you go to his apartment with anyone else? A. Yes, with Mr. Edlin and Mr. Johnson.

Q. And did you meet the Congressman at that time? A. Yes, he was in bed with a cold.

Q. Did you go in and talk with him? A. Yes.

Q. Was anyone with you at that time? A. I was introduced to Congressman Johnson by Mr. Edlin.

Mr. Edlin and Mr. Robinson went inside to another room of the apartment to speak with Mrs. Johnson, I presume. I spoke with Congressman Johnson. He asked me what I knew about the treasury note. I told him.

Q. What did you tell him?

(Mr. Doub) When is this?

(Mr. Marion) He said it was some time early in 1961.

By Mr. Marion:

Q. What, if anything, did you tell him was Mr. Hoffa's connection with that particular incident? A. I did not tell him anything about Mr. Hoffa.

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(Vol. 16 [1505]) Thereupon—

LOUIS D. GOLDMAN

a witness, having been previously sworn, resumed his testimony further as follows:

CROSS EXAMINATION

(Mr. Williams) May I proceed, if the Court please?

(The Court) Yes.

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Q. And I believe you said in response to Mr. Marion's [1506] question, that you passed the examination successfully but were not admitted because of the fact that you were indicted? A. That is right.

Q. The fact is that you were indicted eleven times, were you not? A. Yes.

• • • • • •

[1517] Q. Now, Mr. Goldman, going back to 1962 on January 22, and directing your attention to an interview and, as I understand your testimony, the only interview that you had with Mr. Strickland and Mr. Brandes of the [1518] FBI? A. That is correct, sir.

Q. During that interview, I think you said a few moments ago that you were asked about Congressman Johnson? A. That is right, sir.

Q. Now, when you were asked about Congressman Johnson on January 22 of 1962, you told, did you not, Mr. Strickland and Mr. Brandes that you had no information of any kind that Congressman Johnson had ever been paid for interceding with the Attorney General, or any of his assistants in regard to the indictment pending against Mr. Edlin? A. I said that I have no personal knowledge of any payments to Congressman Johnson with regard to interceding with the Attorney General.

Q. Well, you went beyond that, did you not, Mr. Goldman; you told those agents that you had no information with respect to any payments that had ever been made to Congressman Johnson for interceding with the Attorney General or any of his assistants on behalf of Mr. Edlin? A. That is correct, sir, and I have testified to that on the witness stand. I said nothing about my knowledge of any payments being made directly to the Congressman for the purpose.

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[1520] Q. Now, you also never said a single word to Mr. Strickland or Mr. Brandes about Congressman Boykin. In fact his name was not mentioned in the whole colloquy that you had with him, was it? A. That is correct, Mr. Strickland never even mentioned Mr. Boykin.

Q. Yes, sir, but on December 23 of 1961 when you were interviewed by Mr. Mintz and he asked you if you knew

anything about Mr. Boykin, you told him you did not know one thing about Mr. Boykin, did you not? A. Mr. Williams, that is correct, and the reason for that was I did not want to get involved in any scandals with any Congressmen. I did not want to leave myself [1521] open to any libel suits and at the moment I was studying for a bar examination and I did not want to get involved with that.

* * * * * *

Q. When you told him that you did not know anything about Mr. Boykin, whatsoever, was it true or was it false? A. It was not false. He asked me if I wanted to make any statements. We were talking and when he mentioned the name Boykin, I said nothing. Just like that. That was not a falsehood. I was withholding it because, as I said, I did not want to get involved.

[1522] Q. Now, Mr. Mintz turned over to you 17 pink sheets purporting to be his version of his interview with you, did he not? A. Yes.

Q. And you read those over, did you not? A. Of course.

Q. You adopted them, did you, as being what you said to him? Did you agree that this was substantially what you had said to him? A. Yes, sir.

Q. You also told him that night, December 23, 1961, that, as far as you know, Congressman Johnson had never used any pull for Mr. Edlin in his pending criminal case; did you not say that, sir? A. I did. If it is in there, and I think it is, and the same thing holds true there. I still say I did not know that Mr. Johnson had ever been paid to use any "pull."

Q. And you told Mr. Mintz that night during that fourteen hour interview that Mr. Johnson was acting as a lawyer for First Continental and for First Colony and you told him about some of the meetings that you had gone to with Mr. Edlin where subjects involving First Continental and First Colony were discussed, wholly unrelated to Mr. Edlin's pending criminal case, [1523] didn't you? A. That is correct, and I testified to that on direct examination.

Q. And you also told Mr. Mintz during that interview that night that you had no information about any intercession with the Attorney-General of the United States on behalf of Mr. Edlin, didn't you? A. I do not recall making the statement but if it is in there, that is true.

* * * * * *

[1528] Q. Did Mr. Swan (Mr. Goldman's counsel) tell you that he had talked to Mr. Kardy, the District Attorney of Montgomery County about your pleading guilty and testifying against these [1529] men and getting leniency?

* * * * * *

By Mr. Williams:

Q. Did Mr. Swan talk to you, sir, about a conversation that he had with Mr. Kardy about your testifying in the Montgomery County case? A. No, sir, so far as I know, Mr. Kardy and Mr. Swan had never spoken.

Q. Isn't it a fact that extradition proceedings which were pending against you to return you from Florida to Montgomery County to respond to the indictments that were returned against you in May of 1962 were stayed [1530] and have not yet been heard? A. So far as I know, the information that I had gotten with reference to that was the extradition in Florida had been dismissed because Mr. Robinson and Mr. Edlin had appeared in Montgomery County.

Q. Have you ever appeared before the Montgomery County Court to answer the indictments that were returned against you eleven months ago? A. No, sir.

* * * * * *

[1542] We will take our morning break.

(Bench Conference.)

(Mr. Genn) The only thing, Your Honor, there was some indication in the response of this witness, that there was an indictment pending against Mr. Edlin in Montgomery County. Once again, we get into the same thing that I move for a mistrial.

(The Court) I do not remember his saying anything.

(Mr. Tydings) I do recall a response—

(Mr. Genn) The implication again is that there are other indictments outstanding, Your Honor. Well, these people are throwing it in left and right, every chance they get. I move then for a mistrial.

[1543] (The Court) Denied.

When you say "these people," you mean the other defendant?

(Mr. Genn) I mean the witness, himself.

(The Court) It was in response to a question asked by Mr. Williams. Mr. Williams brought it out on cross examination.

Motion denied.

(Short recess.)

(The Court) Mr. Williams.

By Mr. Williams:

* * * * * *

[1568] Q. At no time, Mr. Goldman, did you ever tell Mr. Mintz that you were at any meeting at which both Congressman Boykin and Congressman Johnson were present, did you? A. I do not think the occasion ever arose.

Q. Well, Mr. Mintz did ask you, did he not, about Congressman Johnson? A. Yes.

Q. He did ask you about those occasions on which you saw Congressman Johnson, did he not? A. He probably did, yes.

Q. And yesterday you told us on the witness stand that you were in the Congressional Hotel at a private dining room when Congressman Johnson and Congressman Boykin [1569] and Mr. Edlin engaged in a conversation when suddenly Mr. Edlin said something to the effect, "I want results. This is costing me a lot of money."

And Congressman Boykin reared back and said, "How dare you speak to me this way," and Congressman Johnson said, "Take it easy," is that right? A. That is right.

Q. You did not tell Mr. Mintz about that on December 23, 1961, did you? A. No, sir, I did not and I explained to you early this morning the reasoning why I did not.

Q. What was the reason? A. I said I did not want to get involved in any scandals with any Congressmen.

Q. Now, when agents Brandes and Strickland of the FBI interrogated you about meetings with Mr. Johnson on January 22, 1962, you did not tell them about any meeting that Congressman Johnson was at at which you were present and at which Congressman Boykin was present, did you? A. The questions that the agent asked me at that time were with reference to the fact, did I know of any payments that were made to Congressman Johnson to intercede with the Attorney General, and my answer to that was "No."

Q. When you went before the Grand Jury on [1570] February 27, 1962, you were asked about meetings that you had with Congressman Johnson, were you not? A. I believe so.

Q. You had told Mr. Mintz of the Washington Post on Dec. 23, 1961 that you had had four or five meetings with Mr. Johnson, had you not? A. Three or four or five, I do not remember.

Q. And before the Federal Grand Jury sitting in this Court House you told the story of five meetings with Congressman Johnson, did you not? A. I do not remember how many I told about.

Q. But at no time did you tell the Grand Jury of any meeting at which you were present when Mr. Boykin and Mr. Johnson were both present, did you? A. No, I do not think I did.

* * * * * *

[1587] By Mr. Williams:

Q. Now, do you know the reason why there has been no extradition proceeding with respect to you in the State of Florida by the State of Maryland in ten months? A. There had been an original extradition proceeding.

Q It was dropped? A. Yes.

Q. It has not been repressed? A. Not to my knowledge.

* * * * * *

[1594] CROSS EXAMINATION

By Mr. Genn:

* * * * * *

[1597] Q. Now, there came a time, did there not, Mr. Goldman, when you formed, or were interested in a corporation known as Dorsa Enterprises, is that not correct? A. That is correct.

Q. When was that corporation formed? A. It was filed November 9, 1962 in the State of Florida. 1961, not 1962.

Q. Sir, just shortly then before your resignation in December of 1961, is that correct? A. That is correct.

Q. Now, where was that corporation formed? A. In Miami, Florida.

Q. And who were the persons who were active in its formation? A. Raymond H. Gannon and myself.

[1598] Q. And what were the business purposes of that corporation to be? A. To act as mortgage brokers.

* * * * * *

[1603] By Mr. Genn:

Q. There had been mention in your testimony yesterday, Mr. Goldman, concerning the statement repeating that Mr. Edlin is supposed to have made concerning an affidavit that he supposedly sought from you in reference to the bond transaction or transactions with Mr. Dranow—and again correct me if I am wrong, but as I recall your testimony,

the import of it was that he sought an affidavit from you that Mr. Hoffa's name was not mentioned in the transaction. A. That is not true.

(Mr. Marion) It is the other way around.

(Mr. Genn) I am sorry; that he sought an affidavit from you that Mr. Hoffa's name was mentioned and that you did not sign such an affidavit because that was not true?

(The Witness) That is correct.

[1604] By Mr. Genn:

Q. Now, when you, Mr. Goldman, think of or are given the name "The Teamsters Union," what is the first name you think of—what is the first name—if you were questioned concerning a statement, someone says "Teamsters Union" —who is the first person you associate with that phrase? A. You mean discussing words in association with words?

Q. Yes. A. It might not be Mr. Hoffa.

Q. Is there any other person that you would be thinking of if you were asked to speak about someone in connection with the Teamsters Union? A. It might be the man in New Jersey who got a $50,000 raise from the Teamsters Union.

Q. Now, is it not a fact, sir, that in the conversations with Mr. Dranow, that you referred to, there was reference to the Teamsters Union? A. There was reference to the Teamsters Union only with reference to a hotel in Miami, the Everglades Hotel. Mr. Robinson and Mr. Dranow got into a conversation about that particular hotel which was undergoing foreclosure by the Teamsters Union.

Mr. Robinson mentioned the fact that he knew the [1605] attorneys for the present mortgagor and he would be glad to offer his services to Mr. Dranow if it would help in getting the matter straightened out and he was told no, thank you. That was the only reference to the Teamsters Union at that time.

As a matter of fact, to go one step further, the Treasury Note was not mentioned at that meeting.

Q. Now, nonetheless, sir, within three or four weeks there was a meeting in which the treasury note was mentioned. A. No.

Q. Going into this particular meeting, is it not true that in fact it was not a question of Mr. Hoffa's name not being mentioned as you stated, but the fact that you did not remember whether his name had been mentioned at the meeting? A. No, that is what your client was trying to get me to say that I did not remember and I did remember that it was not mentioned.

Q. I refer you, sir, to page 18 of the Grand Jury testimony and will read the following at pages 17 and 18 and ask you whether or not you so testified.

"Question: Was there any reference to Mr. Hoffa at that time in the conversation?

"Answer: No, the only reference was [1606] Teamsters Union. Of course, we assume Hoffa, the head of the Teamsters Union but Hoffa's name has not been mentioned at the time.

"Question: When you told Mr. Edlin that you would not say Hoffa was directly involved what did Mr. Edlin say?

"Answer: He tried to convince me that the conversation we had with Dranow, rather, he had with Dranow brought out the name 'Hoffa'.

"Question: And you told them Hoffa's name wasn't in it.

"Answer: I told them I did not remember Mr. Hoffa's name being mentioned. If it was, I don't remember."

Did you so testify, sir? A. That is right. You are reading from the grand jury minutes?

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(Vol. 17 [1636-1637])

PROCEEDINGS

(The jury is absent.)

(The Court) All right. Let us go ahead.

(At the Bench.)

* * * * * *

[1660] (The Court) Mr. Genn has something.

(Mr. Genn) Your Honor, I received yesterday from Mr. Tydings the statement in regard to Mr. Meyer and I am assuming that Mr. Meyer will probably be on the stand today. Now, I would like to avoid the difficulty of having to object to each question again and revert back to what the Court permitted me to do with regard to Mr. Butschky. I have indicated to the Court before we entered on this case, that this is an area of sensitivity as far as this defendant is concerned, and I would like to have, with reference to all of his testimony, a continuing objection on two grounds: One, it is prejudicial and 2, I do not think it is relevant or material.

Now, if I have to object to this prejudicial matter before the jury continually, it is even more prejudicial and I would like to have that continuing objection to his testimony throughout without having to constantly renew it and interject.

(The Court) Does the Government have any objection?

(Mr. Tydings) No.

* * * * * *

Robert F. Kennedy testimony begins on page .... App. 837

* * * * * *

[1815] CHARLES H. Z. MEYER

a witness, being duly sworn, was examined and testified as follows:

(The Clerk) State your name for the record.

(The Witness) Charles H. Z. Meyer. M-e-y-e-r.

DIRECT EXAMINATION

By Mr. Weiner:

Q. Give us your address. A. Room 229 U.S. Court House, Chicago, Illinois.

Q. Chicago, Illinois? A. Yes, sir.

Q. What is your occupation? A. U. S. Probation and Parole Officer.

Q. How long have you been a probation and parole officer? A. The last 28 years.

Q. Now, that has been in Chicago for the last 28 years? A. Chicago, Illinois.

[1816] Q. I would like to direct your attention to the morning of June 13, 1961. I would like you to tell the jury whether or not you were at work on that day. A. I was.

(Mr. Doub) What day is this?

(Mr. Weiner) June 13, 1961.

By Mr. Weiner:

Q. Can you tell us whether or not on that date you had occasion to receive a telephone call? A. I did.

Q. And were you in your private office, or your room at the time that that call came in? A. I was in the office but not at my desk.

Q. Tell us whether or not you were informed of this call? A. I was.

Q. By whom? A. The telephone operator in our office.

Q. And what, if anything, did you do after you were informed that a call had come in for you? A. She told me there was a call from Washington, D. C. and showed me a slip on which she had made the record.

Q. She showed you a slip on which she had made the record? A. She did.

[1817] (Mr. Weiner) Your Honor indulge me one moment.

(Pause)

(Mr. Weiner) Would you mark this for identification, please, a yellow memorandum to be marked as government exhibit 123 for identification.

(The Clerk) Government exhibit 123 marked for identification.

(Government exhibit 123 marked for identification.)

By Mr. Weiner:

Q. Now, I show you this yellow slip of paper which has just been marked government exhibit 123 for identification and I ask you whether you can identify that as anything you have ever seen before? A. I have.

Q. What is that? A. A memorandum of a call, used by our telephone operator to remind the officer of a call.

Q. Is that the one that was shown to you by your secretary on that date? A. It was or it is.

Q. Now, on the basis of that memorandum, did you have your secretary return the call? A. I did.

[1818] Q. And what did you do when you directed her to return the call? A. I went to my desk to await the call.

Q. All right. Then what happened? A. The voice at the other end identified itself as "Congressman"—

Q. Speak into the microphone. A. I am sorry. The voice on the other end of the telephone line identified himself as being that of Congressman Frank Boykin from Mobile, Alabama.

Q. When he identified himself, what if anything was said by either you or the person on the other end of the telephone? A. He asked if I was the man who supervised Mr. Edlin, and I said I am. That I did ten or eleven years ago.

Q. You say you told him you did ten or eleven years ago? A. Yes.

Q. What, if anything, did—

(Mr. Genn) May we approach the Bench, if the Court please?

(The Court) Tell me what you want.

(Mr. Genn) Object to the line of questioning [1819] for the reasons I have stated for the Court and for the record to show I have an objection to this line of questioning.

(The Court) On the proffer of the Government that the evidence which they propose to elicit from this witness will be substantially in accordance with what is alleged in the indictment and not go beyond that with respect to the matters as to which your motion applies, I will overrule your objection.

I will instruct the jury again that any offense which Mr. Edlin may have committed in connection with Illinois or any activity in connection with any parole or probation in connection with such offense is not to be held against him and not to be considered by the jury in its consideration of this case unless and until the Court instructs the jury otherwise. Mr. Edlin's character one way or the other is not in issue in this case and this testimony is only relevant and material in so far as it may support one of the alleged overt acts in connection with the alleged conspiracy.

By Mr. Weiner:

Q. Now, Mr. Meyer, can you tell us what, if anything, either you or the other participant in this telephone call said after you identified yourself and your prior relationship with Mr. Edlin? [1820] A. Well, I was told that Congressman Frank Boykin and Congressman Thomas Johnson of the First District of Maryland--

Q. Keep your voice up. A. —were interested in the investigation.

(The Court) Who told you?

(The Witness) Well, the voice at the other end which I assume was Congressman Boykin.

By Mr. Weiner:

Q. Yes. What did this voice tell you? A. That he and Congressman Johnson were interested in the investigation of savings and loan associations and that Mr. Edlin was active in this area and they wished to know more about his background and my experience with him.

Q. Now, can you tell us whether or not any specific savings and loan association was mentioned by name? A. It was not.

Q. Now, I notice on the back of the paper which is Government exhibit 123 for identification, there is some writing. Did you write that? A. Yes, I did.

Q. Can you tell us whether or not you wrote that in the course of the telephone conversation? A. During the course of the telephone conversation.

Q. Now, what, if anything was said to you after this [1821] last statement that you just related.? A. If I could come to Washington the next day, I said I needed the approval of my superior, that I probably could arrange to leave Chicago the following day and arrive in Washington the day thereafter.

Q. What, if anything, was said by the other person with respect to your superiors? A. That, if necessary, they would be willing to talk to my superiors.

Q. What, if anything, was said after that? A. " We will take care of your expenses. The transportation ticket will be waiting for you," or words to that effect.

Q. How did you leave the conversation? A. That I was to call them back if I could not make it.

Q. You were to call him back if you could not make it. A. Yes.

Q. Now, can you tell us whether or not later that same day you had occasion to receive another telephone call? A. Yes, I did, late in the afternoon I received a telephone call from J. Kenneth Edlin.

Q. You received a telephone call from Mr. Edlin? A. Yes.

[1822] Q. Tell us what, if anything, was said in this telephone conversation? A. He said that he was in Chicago, staying at the Hotel and asked when I would be leaving work.

I said, "About 5:30 o'clock."

He asked if I would stop by the hotel on my way home.

Q. Stop by the hotel. Your hotel or his hotel? A. His hotel.

Q. Where he was staying? A. Yes.

Q. Did you do that? A. I did.

Q. Where did you go when you went to the hotel at which Mr. Edlin was staying? A. I went up to his room.

Q. And when you arrived at his room, was he there? A. He was there.

Q. Was anyone else with him at that time? A. I do not believe so.

Q. Tell us what, if anything transpired after you went to Mr. Edlin's hotel room? A. Well, after the usual greeting, some small talk.

[1823] He said he understood I was going to go to Washington, D. C. to Congressman Boykin and Congressman Johnson. He said that they wanted to know more about him and his activities in the past. He said there was an investigation going on by Congressman and the Attorney General regarding savings and loan associations and that Congressman Johnson was particularly interested in this adea, in this problem or this situation and had made speeches of record in Congress, and that he is very much concerned.

He said that they knew—I say "they," I mean the Congressmen—knew that he had been on parole and that they wanted to have some first-hand, apparently, wanted

some first-hand information. They wanted to hear from me first-hand.

He asked how I was going? Yes, he asked how I was going and I said "By train."

He asked whether the office was giving me the fare.

Q. He asked you whether you were getting the fare from your office? A. Yes, whether I was going by office and I said "No, that the Congressman had said that they would take care of my expenses."

He said, "Your ticket wil no doubt be [1824] available to you."

Q. Mr. Edlin said a ticket would no doubt be available to you? A. He said that.

Q. What, if anything happened after this conversation? A. Somewhere along in this conversation a man entered into the room, yes, came into the room.

Q. Another man came into the room? A. Another man came into the room.

Q. Was that man introduced to you? A. He was.

Q. Can you look around the court room here and tell us whether you can identify that other man as being someone in this court room? A. If that man down there will take off his glasses.

Q. That one right there? A. Yes.

Q. Is the person who just took his glasses off, the one? A. Yes, it is.

(Mr. Weiner) Let the record show that the witness indicated the defendant W. L. Robinson.

By Mr. Weiner:

Q. Now, what, if anything happened after Mr. Robinson [1825] came into the room? A. Oh, there was conversation and after a while Mr. Robinson picked up the telephone and called Washington, D. C.

Q. And— A. While I was in the room.

Q. While you were in the room? A. Yes.

Q. And the three of you were in the room and Mr. Robinson called Washington, D. C.? A. Yes.

Q. Did you hear who he was speaking to? A. Well, from his conversation it sounded like he was speaking to Congressman Johnson.

Q. Well, did you happen, after he spoke on the phone, did you happen to get on the telephone? A. Yes, the telephone was handed to me and I spoke with a person who was identified on the other side as Congressman Johnson.

Q. You spoke to a person on the other end of the phone? A. Yes.

Q. Who identified himself to you as being Congressman Johnson? A. Yes.

[1826] Q. And what, if anything was your conversation with this person? A. I said that I had permission to go—my superior had given me permission to go and I would be able to leave late the following afternoon from Chicago and arrive in Washington, D. C. Thursday, June 15, it would be then, of 1961.

Q. Now, after you finished speaking, did anyone else speak on the telephone to this other person? A. Well, I am not too sure. I think that Mr. Edlin did but—

Q. You are not sure? A. I am not really sure.

Q. Now, did you leave on the following afternoon, June 14? A. I did.

I left at four o'clock on the B&O Railroad.

Q. By train? A. By train.

Q. When did you arrive in Washington, D. C.? A. I arrived in Washington, D. C. Thursday morning, June 15, 1961.

Q. Now, what if anything happened when you arrived at the train station in Washington? [1827] A. I started for the cab stand and was on the way there. Mr. Robinson approached me or met me and said he wanted to take me directly to Congressman Boykin's office.

He hailed a cab and we got into it and went directly to the House of Representatives.

He then took me directly to Congressman Boykin's office, introduced me and left the two of us alone.

Q. He took you into Congressman Boykins' office and left you and Congressman Boykin alone, you say? A. Yes.

After some informalities.

Q. Did you pay for the taxicab? A. I did not.

Q. Did you pay any of the expenses of this trip? A. I did not.

Q. What, if anything took place after you went into Congressman Boykin's office and were with him? A. After the usual greetings and introductory remarks, he asked me how long I had known Mr. Edlin.

I indicated that I had known him for the last 19 years, nine of which were officially as his parole and probation officer.

[1828] Q. And what, if anything else was said in this conversation? A. He asked something to the effect, as to how I got acquainted with him.

I said that, through an SEC violation for which he was sentenced for four years and placed on probation, five years thereafter.

Then I was asked how we made out?

Well, not exactly that way. I was asked were there any difficulties and I said that there were not. That he was very cooperative.

He reported to our office more often and to me more often

than actually required. Sometimes weekly and that there was no difficulty except toward the end of his supervision period when two Federal agencies and a state agency—

(The Court) Is there any need to go into this?

(Mr. Weiner) No.

(The Court) I do not think we ought to go into this any more than is necessary to show the alleged proposed connection.

(Mr. Weiner) Yes, sir.

By Mr. Weiner:

Q. Now, after you finished telling Congressman Boykin these things that you told him what, if anything, [1829] happened then? A. Well, I did point out that it had been satisfactory.

Q. You did point out that the probation had ended satisfactorily? A. Yes.

Q. And, after you pointed that out to him and finished your conversation with him, what if anything happened then? A. Oh, Congressman Boykin took me to Congressman Johnson's office.

Q. Congressman Boykin took you to Congressman Johnson's office? A. Congressman Boykin took me to Congressman Johnson's office.

Q. Was that in the same building? A. Yes. We talked there.

Q. What happened after you arrived in Congressman Johnson's office? A. Well, Congressman Johnson was busy. There were some men in his office and so I waited in the outer office and Congressman Boykin went in and after a while these gentlemen left the office, and I was ushered into Congressman Johnson's office and was introduced to Congressman Johnson by Congressman Boykin.

Q. First Congressman Boykin went in—was [1830] with

Congressman Johnson before you went in? A. Yes. I did not go in right away. No, I had to wait in the outer office.

Q. You were asked to come in after that? A. Yes.

Q. Did you then have a conversation—when you went in there, into Congressman Johnson's office, did Congressman Boykin stay? A. No, he did not. I do not remember his being around. He left. I do not remember his being there when I talked to Congressman Johnson. No, he left.

Q. Did you then have a conversation with Congressman Johnson? A. I did. Substantially the same as the other.

Q. You told him substantially what you had told Congressman Boykin? A. Substantially the same.

Q. Now, what if anything, happened after you told this to Congressman Johnson? A. Congressman Johnson pointed out or, yes, pointed out that he was very much interested in the investigation of savings and loan associations, that he had made speeches in Congress and that he was very much concerned with their proper regulation.

Q. What, if anything, happened after this [1831] conversation? A. I was ushered back into the outer room and on the way out, someone handed me some papers and also a cook book and material that was being distributed by Congressman Johnson's office to his constituents.

Q. You were handed some material? A. Yes.

Q. I would like to show you a paper reprint from the Congressional Record marked Government Exhibit 91, and I would like to ask you if you can identify that as a paper which you have seen before? A. Yes, it is.

Q. Is that paper that was handed to you? A. It is.

Q. Now, I call your attention to the fact that certain paragraphs in that paper are blocked out in red. A. Yes.

Q. Do you recall whether they were blocked out in red when that paper was handed to you? A. Yes, they were.

Q. They were at that time? A. Yes.

(The Court) Do you want to identify that? You have just spoken of a paper but there is nothing in the [1832] record to—

(Mr. Weiner) It is Government Exhibit 91—the reprint of the Congressional Record speech of Congressman Johnson of June 30, 1960.

(Mr. Doub) Has the witness identified this as the paper given to him or that he received a paper that resembled that, or was a copy of that?

(Mr. Weiner) Do you recall bringing the copy that was given to you to Baltimore?

(The Witness) I did.

By Mr. Weiner:

Q. Back in May of 1962? A. I brought a paper. I did.

Q. Was that the paper that had been given to you in Congressman Johnson's office, that you brought to Baltimore then? A. It looks like it.

(The Court) To whom did you give the paper that you brought to Baltimore?

(The Witness) This paper?

(The Court) Yes, if that is the one. That one or a paper just like it. To whom did you give it in Baltimore?

(The Witness) I gave it, at the grand jury [1833] hearing, I gave it to the U.S. Attorney. The United States Attorney.

(Mr. Tydings) That was the paper marked for identification.

(The Court) Is that what you wanted to know, Mr. Doub?

(Mr. Doub) I am still not clear whether that is the one he got.

(Mr. Tydings) It is marked Grand Jury Exhibit in the upper right hand corner. We brought it to the Court's attention when it was originally offered in evidence.

By Mr. Weiner:

Q. Now, Mr. Meyer,—

(Mr. Doub) Would you ask him who gave him that paper?

(The Court) He said it—yes. Do you remember who gave it to you originally in Congressman Johnson's office?

(The Witness) I do not remember who originally gave it to me. It was given to me in Congressman Johnson's office.

(The Court) Were any other papers given to you at the same time?

(The Witness) Yes, there were two other papers.

[1834] Somewhat like this and then also, well, material that was being distributed by the Congressman to his constituents. I think one was a cook book and had recipes. I did not look at them too closely, I glanced at them.

By Mr. Weiner:

Q. This material was all given to you at once? A. It was all given to me while I was in the office. I cannot tell you whether it was all given to me at once. I do not think it was all at once. I do not think it was a bundle, if that is what you mean.

Q. No. Now, Mr. Meyer, what, if anything, happened after this?

You say you were out in the outer office, this material was given to you.

What, if anything, happened after that? A. I was ushered back to the outer office and I glanced at this material quickly and was waiting and after a while Congress-

man Boykin and Congressman Johnson came out and approached me and indicated that this information which I had could be very useful or helpful to the Attorney General and should be given to him.

Q. You say Congressman Johnson and Congressman [1835] Boykin came out. Did they come out of Congressman Johnson's office? A. Into the other office, yes.

Q. Had you observed Congressman Boykin going back in after you had come out? A. No, I had not.

Q. So you do not know when he went back in after you came out? A. I do not know. I cannot say.

Q. All right. A. I probably was looking at the papers and did not see. I do not know.

Q. What was told to you? A. Well, that information that—

Q. Who said it first? A. One of the two.

Q. Either Congressman Johnson or Congressman Boykin? A. I cannot remember who said it.

Q. Was the one who said it then in the presence of the other? A. They were together.

Q. Yes, and what was said? A. That the information which I had could be very helpful to the Attorney General and should be given to him—words to that effect.

[1836] Q. What, if anything, did you then do after that? A. I went with them. They secured a taxicab and I went with them in the cab to the Attorney General's office.

Q. Did anyone else go with you and the two Congressmen? A. Yes, Mr. Robinson.

Q. Mr. Robinson went along with you? A. Yes, he met us along the way somewhere. It was either outside of the office or by the office.

Q. He went with you? A. In the cab, yes.

Q. Did you then go to the Department of Justice? A. We did.

Q. Where, in the Department of Justice, did you go? A. We went first to the Attorney General's office and were informed that he was not available, or was not in.

Q. Did all four of you go to the attorney general's office? A. All four of us were there.

Q. Now, after you were informed that the Attorney General was not then there, what, if anything, did the four of you do? A. Well, we were referred to the First Assistant to [1837] the Attorney General, Mr. Herbert Miller.

Q. Mr. Herbert Miller, the Assistant Attorney General? A. Yes.

Q. Did you then go to the Assistant Attorney General's office? A. Not right away. I stayed on the outer office but Congressman Boykin and Congressman Johnson went into Mr. Miller's office.

Q. Is Mr. Miller's suite of offices right next to Mr. Kennedy, or is it a distance away? A. I do not recall whether it was. It is some distance. That is quite an expansive space.

Q. Did the four of you then go—tell us whether or not the four of you went from Mr. Kennedy's suite of offices down to the assistant attorney general's suite of offices? A. No, just two. Congressman Boykin and Congressman Johnson went to the Assistant Attorney General's office. I sat down in the outer room.

Q. In whose outer room, the outer room of whose office? A. Well, I guess it must be the First Assistant, Mr. Miller's.

Q. Mr. Miller's office? [1838] A. Yes.

Q. Where was Mr. Robinson at that time? A. He was busying himself with some telephone calls and then disappeared. I think he went in the hallway or something. He disappeared for a while.

Q. The hallway outside of Mr. Miller's suite? A. Yes.

Q. Now, what happened after the Congressmen were in Mr. Miller's office? A. Well, after a while they opened up the door and invited me in and closed the door behind them and introduced me to Mr. Miller and—well, introduced me.

Q. What were the conversations at the time you were there with the Congressmen and Mr. Miller? A. Well, Mr. Miller just asked me, I cannot just exactly remember but he asked me about Mr. Edlin and then stated that, very briefly stated that he was busy or previously engaged and could not take the time to question me. He requested that I go and see one of his assistants by the name of Mr. John J. Cassidy.

He gave me the room number and it was, being unfamiliar with the building, I had no idea where this was, so he took a blue pad and drew a map for me and after he drew it, it was still too complicated, and so he [1839] offered to get, secure a guide for me.

Q. Did someone then come who went with you down to Mr. Cassidy's office? A. When he suggested securing a guide, someone opened the door and Mr. Robinson was 'way at the other end of that waiting room and they called him in.

Q. Someone called Mr. Robinson in? A. Yes.

Q. And showed Mr. Robinson or explained to Mr. Robinson how to get there? A. Yes.

Q. And then what happened? A. Mr. Robinson took me directly over to Mr. Cassidy's office.

(Mr. Weiner) If Your Honor please, I would like to have marked for identification government exhibit 124, the blue pad entitled "From Assistant Attorney General Criminal Division."

(The Clerk) Government exhibit 124 marked for identification.

(Government Exhibit 124 marked for identification.)

By Mr. Weiner:

Q. Now, Mr. Meyer, I show you government Exhibit 124 for identification, a blue sheet entitled "From [1840] Assistant Attorney General Criminal Division," and I ask you if this is the piece of paper that Mr. Miller gave you? A. Yes, this is, the map he drew.

Q. The little map he drew in the upper righthand corner? A. Yes.

Q. When you went down to Mr. Cassidy's office with Mr. Robinson, what happened then? A. Well, when Mr. Cassidy came out, the first thing, of course, Mr. Robinson spoke to the girl. Mr. Cassidy came out, Mr. Robinson introduced me to Mr. Cassiday and said that I had certain information regarding the Edlin matter which Mr. Miller wished me to give to him.

Q. Mr. Robinson said this? A. Yes. When he introduced me. Then Mr. Cassidy took me into a private room off this waiting room, closed the door and asked me—said, "I do not know what this is all about."

I said, "I do not, either."

So, when I said Mr. Miller had directed me to come over—

Q. I want to comply with his Honor's direction. You then proceeded to tell Mr. Cassiday what you knew about Mr. Edlin? [1841] A. No, not at that time because Mr. Cassidy called Mr. Miller for instructions and then Mr. Cassidy said after the phone call, said "Well, this will take some little time to do. Why don't you go to lunch first and come back after lunch about 2:30."

Q. Did you go to lunch? A. I did.

Q. Had you previously made any appointment with anyone for lunch? A. I had not made an appointment but Congressman Boykin was kind enough to invite me to lunch.

Q. Congressman Boykin had invited you to lunch? A. Yes.

Q. Did you go then and have lunch with Congressman Boykin? A. Yes.

Q. Where did you lunch? A. In some Congressional dining room. He had a large delegation from Alabama.

Q. There was a large group of people there? A. Yes.

Q. You just attended the luncheon? A. Yes.

Q. There was no discussion of the case at that time? [1842] A. No, nothing at all.

Q. Now, after the luncheon did you then go back to the Justice Department to Mr. Cassidy's office? A. I did.

Q. When you went back did you then have a discussion with Mr. Cassidy? A. Yes, I did. He took me back into the same interview room and called for a secretary, closed the door and that afternoon—well, Mr. Miller had given, I had asked Mr. Miller specifically what he wanted and he said that he was too busy and had another appointment. But these were the instructions. I should start at the beginning of my experience with Mr. Edlin and tell all I knew as best I could recall it.

These were my instructions and this is what we did in this private interview room, myself, Mr. Cassidy and the secretary.

Q. In this conversation you just mentioned where Mr. Miller told you this was after the two Congressmen had been in with Mr. Miller alone? A. Yes.

Q. Then you spent the afternoon telling Mr. Cassidy what you knew? A. I did.

[1843] Q. What, if anything—about what time was it that you left Mr. Cassidy's office? A. It was around five o'clock, very close to it.

Q. When you left Mr. Cassidy's office, did you have

occasion to meet any one on your way out? A. Well, I went out in to the long hallway and I was sort of lost just at the moment to know what to do and then after awhile Mr. Robinson appeared 'way at the far end and came and said "I want to take you to your hotel." So we took a taxicab.

Q. And went to a hotel? A. Yes.

Q. Had you made reservations at this hotel to which you were taken? A. No, I had not. I did not know where I was to go.

Q. At what hotel were you then taken? A. The Woodner.

Q. The Woodner? A. Yes. Am I pronouncing it right? W-o-o-d-n-e-r.

Q. I think that is the way it is pronounced. In Washington, D.C.? A. Yes.

Q. And what, if anything happened when [1844] you and Mr. Robinson got to the Woodner Hotel? A. We walked up to the desk and Mr. Robinson announced who I was and the girl handed me the key to the room.

Q. Did you then go to your room? A. Yes.

Q. After you were in your room, you had occasion to have supper that evening, did you? A. Well--

Q. Dinner that evening? A. Yes.

Q. And with whom did you have dinner then? A. I went to my room and freshened up and was sitting there and wondering what to do next when, maybe a half hour or 45 minutes later, I received a call from Mr. Robinson, and he asked what I was doing and how—if I had any plans and I indicated I did not, and he said, asked whether—if I wished to join him and his wife and little daughter for dinner.

I accepted.

Q. At this dinner there was not any discussion? A. None at all.

Q. About what time did you finish your dinner with him? A. I do not know. It was not a long dinner. [1845] About an hour and a half, let us say.

Q. What did you do then after dinner? A. I went back to my room alone and I was tired. I was exhausted and so I laid down on the bed and tried to read a little bit and that was it, and about ten o'clock or somewhere along in there, the telephone rang.

Q. Who was it? A. Mr. Robinson. He asked what I was doing. If I had any plans. I said no. And he said "how would you like to see the hotel? It is a lovely hotel and cocktail lounge."

Q. Did you then join him? A. I did.

Q. At the cocktail lounge? A. I did. We always met downstairs in the lobby. He never went up to the room with me. No one did.

Q. When you were at the cocktail lounge, did anyone arrive? A. Yes, after about two or three other men, either arrived or were around there. I think they arrived—it seems they arrived and Mr. Robinson seemed to know them and called them over to our table and introduced them.

Q. They joined your party, joined the two of you? A. Joined the two of us.

[1846] Q. Did there come a time when someone else who you knew arrived? A. Yes, roughly an hour later. I was about ready to leave and about an hour later, Mr. Edlin arrived and joined us.

Q. Was he with you awhile? A. I did not hear you.

Q. Was he with you awhile A. He was with us awhile.

Q. Now, what, if anything happened when you got up to leave the cocktail lounge? A. I was tired and I got up and started to leave and excused myself and started to leave and then Mr. Edlin got up and walked with me down the hallway.

Q. To the elevator? A. Yes.

Q. Did you have any conversation with him at that time? A. Oh, not much but he did ask about my discussion with Mr. Cassidy. I said that I gave him whatever information I had but that I did not see how this ancient history information was related in any way to any current investigations that might be going on.

Q. You said you could not see how what you knew was related to any current matter? [1847] A. Any current matter, yes.

Q. Can you tell us whether or not you knew at the time of your trip to Washington, D.C. that Mr. Edlin was under indictment in the District of Maryland? A. No, I did not. I knew that he was being investigated but I did not know about the indictment.

Q. You did not know about the indictment? A. No.

Q. Then you spent the day in Washington on your own business and went back? A. Yes, I went to the Administrative Office, to our office and spent the day there and went back to my own the following evening.

Q. To Chicago? A. I arrived in Chicago on Saturday June 17, I think would be the date.

(Mr. Weiner) If Your Honor please, I would like to offer into evidence at this time Government Exhibit 123 and 124 for identification.

(The Clerk) Government Exhibits 123 and 124 previously marked for identification now marked into evidence.

(Government Exhibits 123 and 124 marked in evidence.)

* * * * * *

(Vol. 18 [1859]) (In open court.)

(The Court) Bring the jury in.

Thereupon

CHARLES H. Z. MEYER

a witness, having been previously sworn, resumed his testimony further as follows:

(The Court) Any further questions on direct?

(Mr. Tydings) No more, Your Honor.

(The Court) Mr. Doub?

CROSS EXAMINATION

By Mr. Doub:

Q. Mr. Meyer, you testified yesterday that upon arrival in Washington, you and Mr. Robinson, or [1860] Mr. Robinson took you up to the office of Mr. Johnson, do you recall that? A. Congressman Boykin.

Q. The office of Congressman Boykin. A. Yes, sir.

Q. Now, you had never seen either Mr. Johnson or Mr. Boykin prior to your visit? A. No.

Q. To the office? A. I had not.

Q. Now, after they left you at the Department of Justice, after introducing you to Mr. Miller, you never saw Mr. Johnson again, did you? A. I did not, no.

Q. You said that before going up to the Department of Justice, you talked to Mr. Boykin and Mr. Johnson for, I believe you said, ten or fifteen minutes? A. I do not know whether I put a time on it.

Q. How long was it? A. Perhaps about fifteen minutes.

Q. About fifteen minutes? A. A piece.

Q. Now, didn't Mr. Johnson in the course of your conversation with him express particular interest in whether there were any convictions of Mr. Edlin [1861] other than that 20 years before in 1941?

(Mr. Genn) The same objection, Your Honor.

(The Court) Overruled.

(The Witness) Would you repeat that, please?

(Mr. Doub) Read it, please.

(The question was read.)

(The Witness) Convictions before 1941.

By Mr. Doub:

Q. Before or after? A. Before or after.

Q. Before or after.

(The Court) The question is just to be answered "yes" or "no."

(The Witness) Yes.

By Mr. Doub:

Q. He did express an interest in that? A. Yes.

Q. And he asked you whether you knew of any conviction of Mr. Edlin other than that in 1940, did he not? A. Yes.

Q. You replied you did not? A. I did not.

Q. And did he not say that there was a mixup in the Justice Department as to Mr. Edlin's criminal records?

[1862] (Mr. Genn) The same objection.

(The Court) Well, I think, if there is an objection, I do not think this is the way to prove any such matter.

(Mr. Doub) Your Honor, it is important to us to prove exactly what was said by Mr. Johnson and by this witness in his presence and we certainly are entitled to do that.

(The Court) You can ask that but it does not tend to prove the facts, Mr. Doub.

(Mr. Doub) No.

(The Court) I instruct the jury, while it is admissible to

prove the nature of the conversation between them, it does not prove the fact that there was any mixup in the Department of Justice.

(Mr. Williams) I suggest it goes to prove the purpose of the visit which the witness has testified about.

(The Court) Yes, I am merely saying it does not go to prove there was any mixup in the Department of Justice.

(The Witness) It is the word "mixup" that has me stumped. He did say—he asked to review the past experiences.

By Mr. Doub:

[1863] Q. Well, that is right. A. For better understanding.

Q. Yes. What did you tell Mr. Johnson and Mr. Boykin about that 1941 conviction at that time? A. I started to tell about it yesterday. I said Mr. Edlin has been convicted on a Securities and Exchange Commission violation for which he was sentenced four years—placed on probation five years thereafter, and he was paroled early, perhaps in half the time. I do not remember that. I had him under supervision for all that time until June of 1950, I believe it was.

Both wanted to know—and then I pointed out Mr. Edlin had been cooperative. They wanted to know about my experience with him. I said he had been cooperative, had reported weekly, and much more often than actually required, because he was very active in business interests in Chicago and that everything went along very smoothly until toward the close of his supervision period when two federal agents and a state agency and two officials of a local bank came into our office with information alleging that he had exercised extreme indiscretion and unsound judgment in the handling of his business affairs.

I then pointed out that we took all of this information to

the United States Attorney in Chicago and after he reviewed it, he said there was insufficient [1864] evidence.

Then we took all the material to the Court of original jurisdiction, the Federal Court in Detroit, Michigan, and received back a written statement that there was insufficient evidence and the case was closed as satisfactory.

Q. Didn't you tell Mr. Johnson and perhaps Mr. Boykin that you had talked to the prosecution witnesses who testified against Mr. Edlin in the SEC case in 1941? A. I do not know whether I spelled it out. They were already familiar with that but I affirmed it.

Q. Didn't you tell them that you thought that in your opinion the conviction was most questionable? A. Well, that the conviction was questionable?

Q. Yes. A. Oh, I do not think I said it that way.

Q. You do not think you went that far? A. I did say there was difficulty in the whole thing.

Q. Did you tell them that in your opinion the prosecuting witness was prejudiced and biased and gave his testimony for personal reasons; did you tell them that? A. Well, my finding was that a prosecuting witness was too emotional about it.

Q. Didn't you say that you had officially reported that and, as a result, you almost lost your job with [1865] the Probation Department of the District Court in Chicago? A. Yes, not exactly that way but I affirmed it. I was asked this. They had all this information.

Q. Now, when was it Mr. Johnson or Mr. Boykin who asked you whether you would be willing to talk to Mr. Herbert Miller, head of the Criminal Division of the Department of Justice? A. Oh, they both did.

Q. They both did? A. They both were there. I do not know which one said it.

Q. One of them did. Now, didn't Mr. Johnson tell you

in that connection that he wanted you to tell Mr. Miller everything you knew about Mr. Edlin? A. No, he did not.

Q. What did he say that he wanted you to tell Mr. Miller? A. I was told, or I was given to understand that the information which I had would be helpful to the Attorney General in his review and that it should be given to him.

Q. What should be given to him?

(The Court) Let me finish. He has not finished.

(The Witness) The information which I had should be given to the Attorney General. It was the first assistant, or the assistant attorney general, Mr. Miller, [1866] who told me to start from the beginning and go all the way through.

Q. That is right. A. And tell everything I knew to the best of my recollection.

Q. And didn't Mr. Johnson and Mr. Boykin tell you the same thing? To tell Mr. Miller the same thing? A. Well—

Q. That was your purpose in going up there, was it not, or their purpose?

(The Court) Which question do you want him to answer—the first one or second one? There are two different questions.

(The Witness) Yes, they said that this information should be given to the Attorney General.

By Mr. Doub:

Q. Now, you testified yesterday that you obtained a reprint of a speech of Mr. Johnson in his office. Who handed you such a speech? A. This I do not know.

Q. Was it a girl? A. When I got to the seat I had a whole series of papers and who gave them to me, I really do not know. I think the girl handed me some and a man handed me some. I just cannot tell you but I got them there.

[1867] Q. As a matter of fact, that reprint could have been given to you by Mr. Robinson or Mr. Edlin, could it not? A. What could have been given to me by Mr. Robinson or Mr. Edlin?

Q. That reprint of a speech you identified yesterday? A. Yes, sir. It was not given to me by Congressman Johnson.

Q. No, and it was not given to you by anyone in his office, his employees, was it? A. I do not know that.

Q. You do not know who gave it to you? A. I do not.

Q. It could have been Mr. Edlin? A. He was not there.

Q. Could it have been Mr. Robinson? A. It could have been.

Q. Now, you testified that you were interviewed by Mr. Cassidy in his office in the Department of Justice? A. Yes.

Q. All afternoon? A. For several hours—a couple of hours.

Q. You had been referred to him by Mr. Miller? A. I was.

[1868] Q. And that you got out of his office about five o'clock? A. Around there.

Q. Didn't he have a secretary there to whom he dictated a statement of the facts that you gave him? A. In the inner room were three of us, Mr. Cassidy, the secretary and myself; that is all that was there. The door was closed.

Q. Would you tell him certain facts and then he would dictate it to the secretary? A. Or indicate that she should take it.

Q. Take down what you were saying? A. Take down something.

Q. Now, did he supply you with a copy of that statement thereafter? A. No, he did not.

Q. Did you have a file with you, a written file that you brought with you to that meeting? A. I had some notes and a copy of my pre-sentence but I did not have the entire file.

Q. Did you have any probation reports with you? A. I do not think so. I do not recall. No, I do not think so. I was told not to bring the entire file, so I did not. But I had some more notes. I had a pre-sentence investigation report and some notes.

[1869] Q. Do you have those notes with you? A. With me now—no.

(Mr. Doub) I call on the Government to produce the statement taken from this witness by Mr. Cassidy.

(The Court) On what ground?

(Mr. Doub) I think it is relevant.

(The Court) On what ground?

Are you claiming it under the Jencks Act, or are you asking them to produce it under some other theory, as a general request to see it? This comes flatly, it seems to me—I do not see how this is possibly a Jencks Act paper. It is not an interview about this case at all.

(Mr. Doub) Your Honor forgets why the Government called this witness and I think that when they call him and I am not going to state why they did at this point, but if Your Honor will consider why the government called him, what his testimony was on direct examination, I think we are entitled to know whether he fully and correctly made representations to the Department, and what they were.

(The Court) I did not say you can not have the paper if the Government gives it to you. I am asking you the basis on which you are asking for it, whether you are

claiming it under the Jencks Act. Evidently you [1870] are not claiming it under the Jencks Act.

(Mr. Doub) I am claiming it under the Jencks Act and outside of the Jencks Act. Your Honor, there is no objection to it. Your Honor is interrogating me on this when the Government has not even objected to it.

(Mr. Tydings) We have some questions, Mr. Doub.

(The Court) You demanded the Government to give it to you. I did not ask them to give it to you. I will now rule it is not subject to the Jencks Act. Now, do you still ask the Government to give it to you?

(Mr. Doub) I say, Your Honor, there is no ruling before you until the Government refuses to produce it.

(Mr. Tydings) Do you maintain the copy of the report is the best evidence of what the witness told Mr. Cassidy? Is that the reason you want to see it? Because, if that is the reason, the Government will now offer it into evidence if that is the reason you wish to see it.

(Mr. Doub) I do not know whether it is or not.

(Mr. Tydings) You have to have a legal point.

(The Court) You must know, Mr. Doub, the basis on which you are asking for it because the effect of—if it comes under the Jencks Act, it is one effect.

[1871] If you ask for it as best evidence, which Mr. Tydings suggested, there is another result. If you ask for it for some other reason, there may be a third result. I want to know the basis on which you are asking for it. Are you asking for it under the Jencks Act?

(Mr. Doub) Yes.

(The Court) I rule that it does not come within the Jencks Act.

(Mr. Doub) All right.

(The Court) Do you still want it?

(Mr. Doub) I do.

(The Court) All right, give it to him, Mr. Tydings.

(Mr. Doub) The witness said yesterday, Your Honor, this was "a can of worms" to get into this.

(Mr. Tydings) That was not this matter, Mr. Doub.

(The Court) This witness did not say anything about a "can of worms."

(The Witness) No, I did not.

By Mr. Doub:

Q. Mr. Meyer, neither Mr. Johnson nor Mr. Boykin attempted to influence you in any way as to the information you were to furnish the Justice officials about Mr. Edlin, did they? A. No, there was not any kind of influence at all.

[1872] Q. And the information you furnished to Mr. Cassidy and to Mr. Johnson and Mr. Boykin was based on fact to the best of your recollection? A. Yes.

Q. You stated the facts as accurately as you recalled them? A. As accurately as I could recall them, with the help of my notes.

(Mr. Doub) That is all.

(Mr. Williams) Your Honor, I think the record should show that I have not looked at the document handed to Mr. Doub by Mr. Tydings pursuant to Mr. Doub's demand for its production.

(The Court) The record may so indicate.

(The Court) Is Mr. Genn going to examine? I think we might as well—while we are getting the record straight—while we were getting that, I wanted to be sure. It looks like Mr. Genn's associate was coming up for the paper. I want to know whether you were going to look at it so

that we would have on the record at the same time who was seeing it and who was not for whatever effect that may have on any ruling.

(Mr. Robinson) The defendant Robinson declines to examine it.

(Mr. Genn) We make no attempt at this time, Your Honor.

[1873] I imagine, as Your Honor has said, we will cross that bridge when we get to it.

(The Court) So, who has it now?

(Mr. Tydings) Mr. Doub has returned the copy.

(The Court) Go ahead, Mr. Williams.

CROSS EXAMINATION

By Mr. Williams:

Q. Mr. Meyers, I want to take you back, if I may, sir, to June 13, of 1961.

(Mr. Tydings) Do you think we should have this copy marked for identification?

(Mr. Williams) Mr. Tydings, you may do anything you choose with it.

(Mr. Weiner) The Government would like to have marked for identification as Government Exhibit 125 the copy of the stenographic report of the interview called for in open court by Mr. Doub and furnished to him.

(The Clerk) Government Exhibit 125 marked for indentification.

(Government Exhibit 125 marked for identification.)

(The Court) All right, Mr. Williams. Now, I think we can let you start.

(Mr. Williams) Thank you, sir.

[1874] By Mr. Williams:

Q. Mr. Meyer, I started to direct your attention to June 13 of 1961. That was the day on which you received a call from Washington from Congressman Johnson and Congressman Boykin, is that correct? A. That is correct.

Q. And later the same day, as I recall your testimony, sir, you received a local telephone call in Chicago from Mr. Edlin? A. I did.

Q. It was pursuant to the telephone call that you received from Mr. Edlin that you subsequently joined him at his hotel? A. I did.

Q. I will ask you, Mr. Meyer, if you will carefully departmentalize in your mind, if you can, sir, what information you received in the telephone call from Mr. Johnson and Mr. Boykin and what information you received thereafter from Mr. Edlin for the purposes of my questions? A. After Mr. Johnson's telephone call?

Q. Yes. What I am asking you to do is to departmentalize what information you received from Mr. Johnson and Mr. Boykin and what you thereafter received from Mr. Edlin. I am going to ask you this specific question. Is it not the fact that when Mr. Johnson and Mr. Boykin [1875] called you, thereafter you returned the call and had a conversation with them? A. Yes, sir.

Q. That they told you they were looking into a savings and loan case? A. Using the word "case." I did not have that impression.

Q. Well— A. They were looking—the impression that I received was that they were looking into the savings and loan matter and that Mr. Edlin was involved.

Q. Well, excuse me. A. Yes, go ahead.

Q. Well, is it the fact that they said, Mr. Meyer, to you as best you can recall at this time, that they were looking into a savings and loan matter in which Mr. Edlin was in-

volved and they wished to get some information from you? A. Yes, Mr. Edlin was involved.

Q. And when they said that they were looking into a savings and loan matter in which Mr. Edlin was involved, they were speaking of themselves, Johnson and Boykin, is that correct? A. This is what I understood.

[1876] Q. Yes.

Now, thereafter when you came to Washington on the 15th of June and you had a conversation with Mr. Boykin and then with Mr. Johnson, did each of them ask you about the record of Mr. Edlin? A. Yes, they did.

Q. In fact, you brought, pursuant to request by them, the pre-sentence investigative report of Mr. Edlin? A. Oh, yes, but they did not ask for that. I brought this on my own. That was not asked for. I brought that on my own so I would have what they wanted.

Q. You brought that because you knew, did you not, the subject matter on which they wanted to question you? A. Yes, on Mr. Edlin's background and what he had done.

Q. And the pre-sentence investigative report which I assume was dated back in 1940, was it, Mr. Meyer? A. 1941, April or March of 1941, somewhere in there.

Q. —had in it Mr. Edlin's background prior to that time? A. It did.

Q. And it reflected whether or not he had any criminal record prior to that time, did it not? A. It did.

Q. Is that correct? [1877] A. It did.

Q. And when you saw Mr. Boykin and thereafter Mr. Johnson, each of them asked you what that report showed, did they not? A. Well, they did not ask what the report showed. They did not know I had the report with me. They asked me about his background and whether there—what I knew about it and what—if you leave out "what the

report showed," I will say yes, because they did not know I had a report.

Q. Let us see if we can specify it and pin point it. They asked you, did they not, whether he had a record that antedated 1941? A. That is right.

Q. Did he have a record before 1941? A. Yes.

Q. Were there convictions before 1941, this one about which we know? A. Yes, sir.

(Mr. Genn) The same objection, Your Honor.

(The Court) Overruled.

By Mr. Williams:

Q. Now, Mr. Meyer, on that same day you went to the Department of Justice. A. I did.

[1878] Q. And it was there that Mr. Miller referred you to Mr. Cassidy? A. That is correct.

Q. And before you began your conversation with Mr. Cassidy, Mr. Cassidy called Mr. Miller on the phone and he asked "what do you want me to talk to Mr. Meyer about," is not that so? A. Mr. Cassidy asked me first.

Q. Or at least he called Mr. Miller in your presence? A. He did.

Q. And he had a conversation with Mr. Miller? A. He did.

Q. Was that while you were there? A. While I was there.

Q. It was at that point he said "This is going to take some time; why don't you go to lunch and come back after lunch and we will talk?" A. Correct.

Q. And then you came back after lunch and you had your conversation with Mr. John Cassidy? A. John Cassidy.

Q. How long did that conversation last? A. There were

some interruptions. I must have gotten there between 2 and 2:30 and I did not leave until 5 o'clock. It was not continuous. There were some [1879] interruptions.

Q. Without going into the whole colloquy that you had with Mr. Cassidy, Mr. Meyer, would you tell us the substance of the questions that he put to you? A. A two-hour discussion in a couple of minutes?

Q. Well, let me see if I can shortcut that. Would you tell the Court and the jury what kind of questions he asked you? A. Well, he asked me, Mr. Miller had given instructions—I had asked Mr. Miller before I left him specifically what it is that you wish, and he said that I should begin at the beginning, my first acquaintance with Mr. Edlin, follow all the way through, to the best of my recollection.

So, Mr. Cassidy apparently received the same instructions, so Mr. Cassidy asked, "When did you first become acquainted with Mr. Edlin?"

I indicated, because it was my assignment, he was assigned to me by Court order for a pre-sentence investigation and report. I never knew him before or never saw him before. That was about March—I forget, about March 6. It was in 1941. Somewhere along in there.

Then he kept asking questions, "What happened next?" and so on.

Quickly I pointed out that I made a very detailed [1880] investigation and that I interviewed the witnesses. Well, I interviewed the witnesses and that I had a peculiar experience with one of the witnesses who kept me there until two o'clock in the morning. Well, do you want me to tell this whole business? What do you want?

Q. What I want you to tell us, Mr. Meyer, as best you can—I just ask you what kind of questions did he ask you? Let me help you out. Was he primarily interested in whether you had any information as to whether Edlin had

a record, a criminal record? A. He did ask me that and there was no criminal record.

Q. Prior to 1941? A. Prior to 1941.

Q. And were his questions primarily directed to this fact? A. Not for the whole afternoon. Just for the start.

Q. For the start. Now, were the other questions that he propounded to you, Mr. Meyer, primarily directed to get the facts in the case in which Mr. Edlin had been convicted in 1941, in so far as you knew them? A. Yes.

Q. Is that a fair statement? A. That is a fair statement. He wanted the facts.

Q. And did you to the best of your knowledge and [1881] information give to Mr. Cassidy all of the facts that you had on that case? A. I did.

Q. Did you turn over to Mr. Cassidy a copy of the presentence report? A. No, I did not.

Q. You did not give it to him? A. I did not.

Q. But you used it. You did use the report as a basis upon which to give him oral information about the case? A. Yes, he wanted the dates and I had to look at the report in order to get the dates.

Q. Now, did Mr. Cassidy ask you as to your impression with respect to the validity of the case against Mr. Edlin in which he was convicted? A. No, he did not.

Q. He did not ask you that? A. No.

Q. Did you give him any information notwithstanding he did not ask you on that subject? A. Well, the facts spoke for themselves.

Q. I see and you did give him so much of the factual background of that case as you had? A. As I had, yes, sir.

[1882] Q. And that is, I take it, what consumed the greater portion of the interview? A. It did.

Q. Now, then, I will take you back to a point about two hours before that, Mr. Meyer. Did you also give to either Mr. Boykin or Mr. Johnson the kind of information that you gave to Mr. Cassidy in a shortened version? A. It was very short. With Mr. Cassidy I was detailed.

Q. Is it a fair statement to say, Mr. Meyer, that you gave to Mr. Boykin and Mr. Johnson, first of all, information with respect to the criminal record of Mr. Edlin? A. It is.

Q. Then you gave them a very sketchy background of the case in which he had been convicted? A. I did.

Q. It was then that it was suggested to you to go to the Department of Justice? A. Yes.

Q. And give this information? A. Yes.

Q. And you were told, were you not, Mr. Meyer, to tell whomever was your interviewer at the Department, the whole truth about the matter? [1883] A. I was.

(Mr. Williams) I have no further questions.

(Mr. Doub) I have just one more question, Your Honor, if I may.

(The Court) Well—

(Mr. Doub) May I ask just one question?

(The Court) I think we ought to keep this in order. I think Mr. Genn is next. Let us go down the line and back up the line so we do not just jump in and out. You will have a chance coming back up the line.

(The Court) Mr. Genn?

CROSS EXAMINATION

By Mr. Genn:

Q. Mr. Meyer, with respect to the last question that was asked you as to what you were told in terms of the whole truth, Mr. Edlin told you to tell that to the people, too, did he not? A. Oh, he did; they all did.

(The Court) Any questions, Mr. Robinson?

(Mr. Robinson) No questions.

(The Court) Mr. Williams, coming back up the line.

(Mr. Williams) No.

[1884] (The Court) Mr. Doub?

(Mr. Doub) Yes, sir.

FURTHER CROSS EXAMINATION

By Mr. Doub:

Q. Mr. Meyer, neither Mr. Johnson nor Mr. Boykin paid your expenses from Chicago to Washington or from Washington back home, did they? A. The first part I did not get. "Neither" what?

Q. Neither Mr. Johnson nor Mr. Boykin paid your expenses to Washington? A. I do not know.

(The Court) Who did pay them?

(Mr. Doub) Well, did either one of them pay you any money?

(The Witness) No, I know I did not pay it.

By Mr. Doub:

Q. I understand that. A. Yes, sir.

Q. But they did not pay you any money—did they? A. No.

(The Court) Who did pay for your ticket?

(The Witness) I do not know. I was not given any money. I do not know.

(The Court) Did you pay for it, yourself?

(The Witness) I did not. I thought I was—

[1885] (The Court) Where did you get your ticket?

(The Witness) Over the telephone I was told—that these were the words—"we will take care of your expenses and transportation will be there."

(Mr. Weiner) Whose words were they?

(The Witness) They must have been Congressman Boykin's because he is the one I was talking to. That was the voice at the other end of the line.

(The Court) You must have used a ticket for the train?

(The Witness) Yes, sir.

(The Court) Where did you get the ticket?

(The Witness) It was either—where did I get the ticket? Well, it was delivered to me at the office or else I picked it up at the railroad station. I do not recall. I tell you, I took several trips about that same time. Sometimes I picked up the tickets and sometimes it was given to the girls in our office and they gave it to me and sometimes it was delivered, but the ticket was delivered.

(Mr. Williams) Maybe I can help if I may ask another question or two.

(The Witness) I can tell you how I felt about it. I felt I was on Congressional expense. I am sorry.

[1886] (Mr. Williams) Let me ask you about some facts.

FURTHER CROSS EXAMINATION

By Mr. Williams:

Q. Did Mr. Robinson give you your train ticket? A. He probably did.

Q. Now, when you went to the Woodner Hotel, was that at Mr. Edlin's suggestion? A. No. I stepped out, after I got through with Mr. Cassidy, I stepped out in the hallway, and I felt lost because there was not anyone there. Then after a while 'way down the corridor I saw Mr. Robinson coming in.

Q. Mr. Robinson took you to the Woodner? A. Yes, sir.

Q. When you had dinner at the Woodner that night with Mr. Robinson, did he pay the check? A. I guess he did.

Q. When you had cocktails after resting up later in the evening, did Robinson or Edlin pay the check? A. I did not. I guess they must have.

Q. And this was the very hotel where Robinson and Edlin were staying, is that right? A. I do not remember if Robinson was staying there or not. I guess maybe they were. I believe they were.

[1887] Q. Because Mr. Robinson and his wife and little girl had dinner with you, did they not? A. I met them downstairs.

Q. They came downstairs, did they not? A. Yes.

Q. Does that refresh your recollection that it was Mr. Edlin or Mr. Robinson who paid your check at The Woodner Hotel? A. I was not there. I cannot tell you who paid it.

Q. When you left, you just left. You did not stop at the desk and pay? A. No, I did not. I just turned the key in and left.

Q. Turned the key in and left. Did you sign anything when you left? A. Not a thing.

(Mr. Williams) Your Honor, that is the most remarkable escape from The Woodner Hotel I have heard of.

(The Court) Did you have a ticket that had the tax paid or not tax paid; was it a government voucher ticket, the tax is paid or was it a ticket showing the transportation tax included?

(The Witness) Really, I do not know. I did not look at it.

[1888] (The Court) That is the easy way to tell.

(The Witness) It was not a "T.R."

(Mr. Tydings) This is a most remarkable trip, Your Honor.

The Government would like to offer, since Mr. Doub used it to cross examine the witness and since Mr. Williams interrogated the witness at length about what he told Mr. Cassidy in the Department of Justice since Mr. Genn also cross examined the witness and asked him whether or not Mr. Edlin told him to tell the truth there, I think the jury should see the report of the memorandum of what Mr. Meyer did tell Mr. Cassidy in the Department of Justice. If there is no objection to this, we would like to offer it in evidence at this time.

(Mr. Doub) May we approach the Bench?

(Mr. Genn) I have not seen the document.

(The Court) You may, of course, see it before it is admitted.

Let them read it.

If they are going to read it I suppose there will be some argument. Suppose the jury takes a short recess now.

(The jury left the jury box.)

(The Court) May I have a copy of it so I may be reading it at the same time.

[1889] Has everyone read this?

All right, bring the jury in.

(Mr. Williams) It appears to be incomplete, Your Honor. It says on the bottom that there is an attached memorandum. We do not seem to have that.

(Mr. Weiner) It is not from this witness. This purports to be a record.

(The Court) That is what he said that William Robinson gave someone for transmission to you. You see, this is a memorandum to Miller from Cassidy.

(The jury resumed their places in the Courtroom.)

(The Court) Now, Mr. Tydings has offered this paper in evidence. Do any of the defendants object to its being admitted in evidence and read to the jury?

(Mr. Williams) I think it only affects one defendant, Your Honor, does it not, because only Mr. Doub called for it.

(The Court) Mr. Doub called for it but it may be admissible. If there is any objection to it, Mr. Tydings will have to say the grounds on which he offers it against each defendant and I will cross bridges as I come to them.

Do you object to it?

[1890] (Mr. Doub) I object to it, Your Honor, on the ground that it was—there is no evidence that it was ever seen by Mr. Johnson.

(The Court) All right. Do you object to it, Mr. Williams?

(Mr. Williams) I certainly do not object to this going in, Your Honor, if it is being offered against me.

(The Court) You say you do not object to it.

(Mr. Williams) No, I do not object to it.

(The Court) Do you object to it, Mr. Genn?

(Mr. Genn) I have already stated the objection previously. It is prejudicial.

(The Court) You do object?

(Mr. Genn) Yes.

(The Court) Mr. Robinson?

(Mr. Robinson) No, I do not.

(The Court) Now, two defendants are objecting to it, Mr. Tydings. On what basis are you offering it? It might be admitted against Mr. Johnson on the ground Mr. Doub asked for it in which event it would not be admissible against any other defendants. The Court must determine, as I have

done in the case of other papers, whether the balance of justice requires it to come in or not to come in.

[1891] If you are offering it as you suggested a moment ago, as the best evidence of what was said, that is something else. On what basis are you offering it?

(Mr. Tydings) Well, if Your Honor please, the Government feels that Mr. Meyers' trip to Washington and his visit with Mr. Cassidy, his conference there, was an act in furtherance of the conspiracy as alleged in the indictment.

Mr. Meyer has been cross examined extensively by three of the four counsel as to exactly what Mr. Meyer told to Mr. Cassidy when he was at the Department of Justice as we contend in an act in furtherance of the conspiracy, and we feel that since there has been cross examination, that the jury is entitled to see what the Department memorandum reflects.

(The Court) All right.

(Mr. Genn) I thought I saw a juror raise his hand as if to ask a question.

(A Juror) Just the lights over there.

(The Court) Pull the curtain down.

(Mr. Tydings) We would only offer it as to what he told the Department. We do not wish to prejudice any of the three defendants who objected. If you feel it does prejudice any of the three defendants, we would rather not have it in. We feel it is admissible for [1892] the reasons stated.

(The Court) You are not offering it on the technical basis as against him. Now, before it would be admissible on the basis that Mr. Tydings is offering it and with his qualification that if the Court feels it is too prejudicial, they would not want it, it seems to me there would have to be two additional matters of proof: One, whether the witness, himself would say that this was a fair summary of what he did say, or Mr. Cassidy was produced to say it was a fair summary

of what he did say. Is any defendant objecting to it on that basis? I take it the reasons for the objection are other than that this is not a fair summary.

Then the next question would appear to be—and this would be relevant, as to whether everything in here or substantially everything in here was told to Johnson and Boykin before he went over.

Mr. Williams' cross examination brought out the fact that the conversations with Johnson and Boykin dealt with the prior criminal record and their not being any, and the background of the case. There are some other matters discussed in here other than the two matters referred to in Mr. Williams' cross examination. If this is to be admitted on the grounds that Mr. Tydings wants it, it seems to me it is not a matter of what the witness told the [1893] Department of Justice but a question of what the witness told Mr. Johnson and Mr. Boykin before he went to the Department of Justice and—

(Mr. Doub) And he has already testified to that, Your Honor.

(The Court) Well, he has testified as to what he told them and it is for the jury to say, certainly, on the basis of all the evidence what he did tell them, whether it was the same that he told the Department of Justice in substance or whether it was not the same that he told the Department of Justice, that would be for the jury.

Now, neither side wants to ask any further questions on this point. Now, for the Court to go further in it, unless further questions are asked by one side or the other, I will sustain the objection of Mr. Genn to this document and, since Mr. Tydings has said if the Court feels it is more prejudicial to one, that he would withdraw it or not press his offer, I will sustain the objection on that ground unless someone wishes to follow it up to clarify, if either side thinks clarification is necessary, of what the witness told Mr. Johnson and Mr. Boykin.

(Mr. Tydings) I think we would like to put the witness back on the stand, Your Honor. Perhaps this—perhaps we would like to give the witness the memorandum and let [1894] him read it because I do not know whether he has ever seen it and then we will put him back on the stand and ask him how much of the memorandum he told the Congressmen or whether he told them substantially all of the facts in it or not and we have a few other questions on redirect.

(The Court) Well, in view of the Court's ruling about the document, I think that question should be carefully framed.

(Mr. Tydings) All right, then, I will submit it to the Court.

(The Court) If you write out the question and submit it to the counsel and the Court.

(Mr. Tydings) We can go forward with another witness and ask Mr. Meyer to retire.

(The Court) Let him read it. It will not take too long. Write out the question you want to ask and pass it to them and I will rule on the question.

(Mr. Weiner) I was going to do it on a paragraph-by-paragraph basis, simply directing his attention—

(The Court) That will do no good. I would not do it on every single paragraph. It seems to me, if all counsel will come to the Bench, I will say very briefly how I think this question could [1895] most fairly and simply be asked.

(At the Bench.)

(The Court) It is obvious from the witness' testimony on direct examination and from the memorandum, that the witness talked to the Department of Justice about three things: (1) Mr. Edlin's background of the 1941 conviction; (2) The facts in connection with the 1941 case; and (3) His progress during the parole and probation period.

Mr. Williams' questions dealt, as I have them, with just

about this: Did you give Johnson and Boykin the same information that you gave the Department of Justice?

The witness answered it in not exactly, or words to that effect.

Then Mr. Williams asked, "Did you tell Johnson and Boykin about the criminal record," and he said in substance and briefly.

"Did you tell him about the background of the case," and he said "Briefly."

Then you stopped, you did not ask him whether he told Johnson and Boykin about the progress on probation, and then Mr. Williams questioned—"Did they suggest you go to the Department of Justice and tell the whole truth," and the answer was "Yes," to [1896] that.

Now, it is a matter—and I am not sure which way it cuts in this case and I think it might cut either way—whichever way the answer came. But it would seem that it might be a matter of importance as to whether he told Johnson and Boykin the substance of Edlin's history during probation and parole.

My suggestion, there is only one question at this point, unless someone wants to go further. The question is, "You have heretofore testified that you told Mr. Johnson and Mr. Boykin in brief the same things you told the Department of Justice about the criminal record. In substance the same thing about the background of the case. Did you tell them substantially the same thing?"

(Mr. Doub) Your Honor, he testified he talked to Johnson and Boykin ten or fifteen minutes. He testified that he was with the Department of Justice all afternoon until five o'clock.

Now, a question such as that would then lead inevitably to this thing going in.

(The Court) You already have enough in to show what it was.

All right, do you object to it?

[1897] (Mr. Doub) Yes.

(The Court) I think I will sustain your objection and I think it might prevent evidence coming in which might be the most helpful to you on a directed verdict you could get.

Objection sustained.

All right, Mr. Genn. I cannot decide between the way you people want to try your cases and one wants to do it one way and the other another way.

Mr. Williams, I gather, wants it in and is satisfied to have it in. Mr. Doub wants it out. If there are objections, I am going to sustain them. I think I get in less harm sustaining objections raised by defendants than by overruling objections.

(Mr. Doub) Your Honor, this is a very difficult question for us.

(The Court) I think it is.

That is all.

(Mr. Genn) Does Mr. Doub want time to decide?

(The Court) I sustain the objection.

That is all.

(Mr. Genn) Your Honor, I would like to have the record show this. Is Mr. Tydings still here?

[1898] (Mr. Doub) I do not know where the question would go from then on.

(The Court) All right. If you do not want the question asked, all right.

(Mr. Doub) Let me ask you this question. Your Honor was discussing this with us. If the United States Attorney were permitted to ask that question and said yes, I told them the same thing that would be one thing but wouldn't the

United States Attorney then say, as indicated, he wants to then offer this thing to show what he did tell them?

(The Court) Mr. Doub, I have said it cuts both ways. One way may affect the jury and you have elected to object, and I think it is better not to pursue that.

(In open court.)

(The Court) Mr. Tydings, after conference at the Bench, I think it is better not to pursue that.

(Mr. Tydings) We will not pursue it, Your Honor.

* * * * * *

(Vol. 19 [1988]) Thereupon—

ROBERT E. REISTER

a witness, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your name for the record.

(The Witness) Robert E. Reister.

(The Clerk) Take the stand, please, sir.

DIRECT EXAMINATION

By Mr. Marion:

Q. What is your occupation? A. I am a special agent of the Federal Bureau of Investigation.

Q. Where do you live, Agent Reister? A. I live in McLean, Virginia.

Q. And where are you presently assigned? A. To the Washington Field Office of the Federal Bureau of Investigation.

Q. How long have you been a special agent of the Federal Bureau of Investigation? A. Since September 8, 1942.

Q. Now. directing your attention the month of January,

1962, I ask you whether or not you had occasion to interview Congressman Frank W. Boykin? [1899] A. I did.

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[2007] (Mr. Genn) I have no further questions.

If the Court please, of course, I think it is clear that this having taken place in January of 1962, is after the date of the charges of this man and of course, would not be admissible against the defendant Edlin.

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[2008] (The Court) I think I will waive the formality and say that that is not admissible against Edlin, since the objection is being made.

REDIRECT EXAMINATION

By Mr. Marion:

• • • • • •

[2011] (The Court) You may take your recess at this time.

(A brief recess was taken.)

(Mr. Tydings) If Your Honor please, ladies and gentlemen of the jury, I am going to read to you certain statements made by Mr. Boykin, the defendant, Congressman Boykin under oath, before the grand jury for the District of Maryland on October 11, 1962. I have picked certain passages from his grand jury testimony. Mr. Williams has asked me to insert others and I will read all passages which Mr. Williams has requested as well as those which we feel are pertinent.

Mr. Doub has asked me to state, and I am happy to do so, that the admissions are offered in this case as evidence against Congressman Boykin.

Beginning with page 3:

"By Mr. Tydings:

"Q. Congressman Boykin, you are here at this time in the presence of the Grand Jury of the District of Maryland

at your own request and invitation; is that right, sir? "A. That is right. I also did the same thing over in the State.

"Q. Before the Montgomery County Grand Jury?

[2012] "A. Yes, and gave them all the information I had.

"Q. You realize there is an investigation going on in which you could be a prospective defendant? "A. That is right.

"Q. You realize there is an investigation going on in which you could be a prospective defendant? "A. That is right.

"Q. You realize that you do not have to answer any questions which I direct to you? "A. I will answer any of them.

"Q. You do have your constitutional privileges. "A. I am glad to answer the things I know.

"Q. Fine, but you do realize that anything you do say or might say could be used against you or could be used to incriminate you? A. Right.

"Q. You have the right to counsel and any question you don't want to answer, you don't have to. "A. Good."

Now, reading from page 6, beginning on line 4. Reading through line 25 on that page.

"Q. Do you recall offhand the price of the property which you acquired in Charles County, just roughly? [2013] "A. I don't know and I sent those records to you. As I tell you, I never looked at the records. I bought it as cheaply as I could. I made the best deal I could. I didn't make the trade. I paid a commission to one man $25,000 for making the deal with Bob.

"Q. For Bob Reynolds' property? "A. Yes, sir. We bought it and kept it for over 10 or 15 years. We have been cutting timber and running sawmills down there. I never happened to see one of them. I have a man from Baltimore

here who runs it for me, so then he got 'way behind and he was almost—in his payments.

"Q. Desser got 'way behind in his payments, interest payments? "A. Yes, I told him we would have to foreclose, I couldn't wait any longer. So then I happened to talk to Congressman Tom Johnson one day and he said, 'I have a fellow who has all kinds of money, who is going to finance a bridge for us up there, and he told me he wanted to put out some money."

Now, reading on page 7, lines 1 through 10.

"So Congressman Johnson brought over Mr. Robinson, and then they brought over Mr. Edlin. [2014] Mr. Edlin told me—and he made a very fine appearance, he just swept us off our feet and he said that he had money running out of his ears and he had to use it and I said, 'Loan it to Mr. Desser.'

So, he agreed to, but he wanted 15 per cent and Mr. Desser couldn't pay 15 per cent, don't you see? But anyway, he went along and he bought the mortgage from Albert Ernest, but I approved everything, I had to approve everything, Mr. District Attorney."

Then on page 24, beginning at line 1:

"Q. At this stage of the game was Congressman Johnson to receive any commission or fee if he was able to find some financing? "A. No; I offered him something and I said, 'I think I ought to pay you,' because I thought he had something.

"Q. At the time when he first brought— "A. I said, 'What are you going to charge.' He said, 'Nothing.' He said, 'They have retained me as their lawyer and I can't charge both.' That is the reason I gave him a little something."

"Q. Did you ever discuss Congressman Johnson's fees with Mr. Edlin or Mr. Robinson? [2015] "A. No, sir, "—

(Mr. Williams) You omitted the next question.

(Mr. Tydings) Excuse me. I left out the three lines before the part we excerpted. Let me read back beginning on line 7.

"A. I said, 'what are you going to charge?' He said 'Nothing.' He said, 'They have retained me as their lawyer, and I can't charge both.' That is the reason I gave him a little something.

"Q. The bull? "A. It cost $1,000 and $100 to send him down. I was trying to give him something. I think he is a wonderful fellow."

Thereafter, going down to line 18.

"Q. Did you ever discuss Congressman Johnson's fees with Mr. Edlin or Mr. Robinson? "A. No, sir, I never did. Tom told me one time that he had to take—they had some travelers' checks, he had to take some travelers' checks in part payment, and they would not pay him, and the night he left to go to Europe on this investigation—and I was supposed to go, too, but didn't—he gave him, he told me $4,000 but then I had Moncure, who had passed on that title, I had another lawyer, I paid him $10,000, Wilson Maingram at Roanoke, a fabulous fellow. He represented the bonding company over here, and they bonded the land. We paid him. He worked with my lawyer. I told him Moncure will bring it down. There has been no transaction and I called Frank Moncure. He is a very old gentleman and very fine, and he said, 'I will bring it down for $100, Frank.' "

Thereafter, reading page 36, beginning at line 6.

"Q. Did Tom Johnson do any legal work specifically in the work you know for Mr. Edlin? A. Yes, sir.

"Q. What did he do? "A. He stayed there all the time. Desser stayed on top of him. Not Desser, Edlin.

"Q. Did Edlin come right to Johnson's office? "A. Yes, sir. He was going to, Tom was going to foreclose the mortgage, and Tom had been out there at this subdivision, which I was telling you about, Cassell's subdivision. He had 600

titles that he was supposed to look over and they had a terrible fuss about what they ought to cost for that, the title on the sale for each plot, and he brought in a pack about this high and told him [2017] what they would do. He had quite a round about that.

"Q. Do you know any legal work which Johnson did for Edlin? "A. He got the lawyer for Edlin. He wouldn't take my lawyers. I told Edlin to take Frank Moncure, because he knew the title and passed on it, and I told him about the fellow at Roanoke and to get this fellow on down at La Plata, where the court house was, but Tom was working on all of those things. I think he had charge.

"Q. Did Tom Johnson do any legal work for the First Colony? "A. I don't think he did. I have no idea of that. I have no idea in the world, but I don't think he did. He left that to Robinson.

"Q. Did he do any legal work for First Continental Savings and Loan? "A. Not that I know of.

"Q. Did he do any legal work for Leisure City Land Company? "A. Yes, he did.

"Q. What work did he do? "A. He hired the lawyers and had to pay him himself. That is what he told me. I didn't know these lawyers.

[2018] "Q. This is all pretty much what Johnson told you, isn't it? "A. Yes, sir.

"Q. You never saw him do the actual work? "A. I was there when he showed me this junk or stuff he had to go through.

"Q. Do you know of any legal work he did for Charles County Land Company? "A. He was handling the deal with DeSales and Mudd and he was foreclosing the mortgage and he hired some more lawyers to help him do that, and that was stopped. I imagine, but I don't know, he passed on the title.

"Q. Do you know who brought Johnson those Cassell mortgages you referred to? "A. No, sir.

"Q. Was he working for Edlin at that time? "A. Yes, sir.

"Q. And he told you that? Johnson? A. That is what Johnson told me. I was down there and I told him what a wonderful subdivision it was. I said, 'You ought to go down there and see it. It is really a fabulous place.'

"He said, 'I have to pass on all these contracts. They are all written wrong and they have to be [2019] straightened out.'

"He just mentioned that to me. Mr. Edlin didn't mention it.

"Q. There is no question that Johnson told you he was doing legal work for Edlin? A. No, sir. He was representing him. He didn't attend too many of those conferences.

"Q. He did not? A. No.

"Q. Did he attend any of them? A. I think so.

"Q. He did? A. I think he had lunch two or three times where they would talk, where we had Robinson and Tom, and we would just talk about it, and I would hear them talking.

"Q. Aside from that, those are the only conferences you know he attended? A. No, he attended some in Desser & Garfield's office, because he was representing Edlin and there when he bought that thing. He left. We stayed until four o'clock in the morning wrestling with that fellow. Tom got up and left about nine o'clock.

"Q. Congressman, did you ever send to Mr. Edlin any copies of correspondence which you may have had with [2020] governmental officials concerning— A. I may have. They were working very hard on this Jimmy Hoffa case, and he was cooperating very good, and they were anxious,

more anxious about that than anything. I might have. I don't know whether I did or not, but I could look it up and see.

"Q. If you did, why did you? A. To keep him posted about what he was supposed to go down there and see."

Now reading from page 41, beginning on line 7.

"Q. Directing your attention to the business with the Department of Justice— A. Yes, sir.

"Q. —what arrangements, who suggested that you go to the Department of Justice and what preliminary arrangements, if any, were made? A. I called Bobby. I said, 'Bobby, I have something here you might be interested in.' I have known him all his life and have known Ethel, his wonderful wife. She is greater than Bobby. I said, 'There may be a chance to look into this and do something.'

"Q. Did you discuss with Congressman Johnson this call before you made it? A. He was there in the room when I called him.

[2021] "Q. Who else was there? A. Nobody.

"Q. Before you made the call, did you discuss with Mr. Edlin or Mr. Robinson that you were going to make it? A. No, sir, but I did later. The reason I did it, Bobby wanted to see the plans, and they had some very elaborate plans, so Robinson took them down, but he didn't go with me—the plans of the city they were going to build.

"Q. You discussed with Congressman Johnson that you were going to make the call? A. He was there. He thought it was a good idea. He brought in a fellow, his assistant.

"Q. Who brought in who? A. Bobby brought in—

"Q. Miller? A. —Miller. Yes. Bobby said, 'make a memorandum of the whole thing, so I can look into it.' They were very much interested in Hoffa, more than anything in the world. That caught them on fire. So Tom

made the memorandum for him, but I never did see the memorandum.

"Q. Who made the memorandum? [2022] A. Tom.

"Q. Tom Johnson? A. Tom Johnson. Tom was with me.

"Q. Tom prepared the memorandum? A. He prepared the memorandum which I never did see.

"Q. Do you know that he prepared the memorandum? How do you know that he prepared it? A. Tom Johnson told me.

"Q. Did he tell you he delivered the memorandum to the Attorney General? A. Yes, sir. I did not go with him when he delivered it.

"Q. The first meeting, specifically what did you discuss with the Attorney General? A. I said, we have this fellow here, and he says he has been framed, and he is going to spend a tremendous amount of money down here and he says there is nothing to it, and I think it would be a good idea to look into and see. He told me this was a frameup over here, too.

"Q. You mean when you say 'over here,' Edlin told you that the indictment which had been returned by the Federal Grand Jury in Maryland against him— A. We didn't know him for a good while. When we [2023] met him that indictment was against him. We never met him until that was over. A. The indictment in Maryland on the First Colony, Edlin told you that was a frameup? A. Because the others were jeolous of his doing good.

"Q. You asked the Attorney General to do what? A. To just take a look at it. He said, 'Prepare a memorandum.'

"I said, 'I can't do it.'

So Tom prepared the memorandum which I never did see.

"Q. Actually, what did you and Congressman Johnson

expect the Attorney General to do? A. Nothing but to look into it and see whether he was framed up there, and this fellow who came down from Chicago made quite an impression on everybody.

"Q. You mean Mr. Charles Meyer? A. I don't know his name.

"Q. Edlin's former probation officer? A. Yes. That fellow made quite an impression. They kept him there all day. I took him in there.

"Q. Who asked Meyer to come to Washington? [2024] A. They did.

"Q. The Department of Justice? A. I think they told him to get him, they told Tom.

"Q. They told Congressman Johnson to get him? A. Yes, sir.

"Q. Did you hear them say that? Who told you that? A No, I didn't. I am sure that was because there was nothing—

"Q. Did Congressman Johnson tell you that? A. Yes, sir.

"Q. Who called up Mr. Meyers to bring him down here? A. I don't know. I never heard from him again.

"Q. Did you meet Mr. Meyers yourself? A. They brought him to Tom's office and I went down there and we took him down to the Attorney General's office, Tom and I.

"Q. Who brought him to Tom Johnson's office? A. I don't know. He was there. He was sitting there waiting and ready to go.

"Q. What was the purpose of taking him down to [2025] the Department of Justice? A. To show what happened in Chicago.

"Q. And what happened in Chicago? A. I never did get to see the memorandum. We were in session and I ran

down there and they turned him over to a man and kept him eight hours.

"Q. What did you and Congressman Johnson hope Mr. Meyer's visit would accomplish? A. I didn't know. He said over there was just nothing. The whole thing, he said, amounted to nothing. He said it was 1933.

"Q. You mean you hoped Mr. Meyers would state that Edlin's former record amounted to nothing? A. I didn't know; he said he would say that.

"Q. Who said he would say that, Edlin? A. Yes.

"Q. Edlin told you that, if Mr. Meyer— A. Edlin and Robinson.

"Q. Edlin and Robinson told you and Congressman Johnson that, if Meyer were brought from Chicago and would appear before the Department of Justice, Meyer would tell the people in the Department of Justice— A. —the truth.

"Q. —which was that Edlin's former crime was [2026] really nothing at all? A. I don't know what he told him. He stayed there, I believe he told them the truth. He is a good fellow.

"Q. What Edlin and Robinson told you— A. Everything was a frameup on them, here and there, too.

"Q. And if you and Congressman Johnson would get Meyer to come to the Department of Justice, Meyer would tell them that? A. We didn't get him. I asked them if they wanted him and they said they would be glad to have him.

"Q. How did he happen to come down? A. I don't know.

"Q. You talked to him before he went to the Department of Justice, didn't you? A. Tom and I went with him.

"Q. Did you tell Mr. Meyer what you wanted him to say? A. Not a thing.

"Q. Why did you go with him to the Department of Justice? A. Mr. Meyer asked us to go. He asked us. I told him we would be glad to.

[2027] "Q. Any reason? A. We only stayed five minutes.

"Q. Any reason why he wanted you to go down with him? A. I don't know what his reason was. He was an old gentleman and not a bad fellow, in my judgment."

And beginning on page 48, starting with line 14.

"Q. What was said to the Attorney General, about the case that was pending in Maryland, the indictment against Edlin and First Colony? A. I don't know. Tom talked on that. I don't know what was said. He was there when I wasn't there sometimes, don't you see?

"Q. What did Congressman Johnson hope to accomplish by talking about the case? A. I don't know. He was representing him. He is a lawyer, and he was representing his client.

"Q. Was he trying to have the case delayed? A. No, I don't think he was. I know he wasn't trying to get it dismissed. He might have wanted it delayed until they could start spending this money down there, but he certainly never said anything about it. He told them just to take [2028] it under advisement and take a look at it, and he gave them the memorandum on it and he went down and spent a whole Saturday evening, as I understand it, going over it, on the memorandum. I never saw the memorandum in my life. I am not a lawyer.

"Q. What did Mr. Edlin and Mr. Robinson hope would be accomplished by the Attorney General and the Department of Justice taking the case under advisement and studying it? A. They were trying to swap off Hoffa for that deal. I don't know, but neither one of them ever talked to Bobby Kennedy.

"Q. But they talked to you and to Congressman Johnson? A. Yes, they talked to me."

Now, beginning page 52, line 8.

"Q. What, if anything, do you know about the travelers' check that Congressman Johnson received? A. I know only what Tom told me.

"Q. What did he tell you? A. He said, 'I didn't get anything out of that fellow.'

"Q. Edlin? A. Yes. 'I can't get my fee and I have gone [2029] to all kinds of expense and time.' He had a partner working on it, and he was very mad, too.

"Q. Adelberg? A. Adelberg. I never met Adelberg. I didn't know he had a partner, and they were working on it. When he got back from Europe, I said, 'Did you get any money out of him?'

"He said, 'I got $4,000 out of him in travelers' checks.'

"I said, 'Why traveler's checks?'

"He said, 'I don't know what it was.'

"Q. Did you know that Congressman Johnson was being paid from time to time while he was representing Mr. Edlin? A. I didn't know it, but I assumed he was.

"Q. Did you know how he was being paid? A. No, sir, he never discussed that with me. I never saw one of the checks or anything.

"Q. Do you know what Congressman Johnson's fee would have been if the Sayre and Fisher deal had gone through? A. It would have been pretty good.

"Q. Would it have been 5 per cent of the total deal, approximately? [2030] A. I don't think so.

"Q. It would have been some percentage of the total? A. It would have been a good one.

"Q. He didn't get anything because it didn't work out, it didn't go through? A. He didn't get nothing.

"Q. This deal was contingent on the success of the deal? A. Right."

"Q. How did you know that Congressman Johnson would have received a good fee if the Sayre and Fisher deal had gone through? A. They said, 'Make that deal and it will be a good fee in it.' "

Now, turning to page 62, line 2.

"Q. Did Johnson do most of the talking in these visits? A. Yes, he did, because they were talking low. He wanted me to go with him when he presented one thing. I said I hadn't heard it or seen it.

"Q. Did you make any comments after the meeting, when you were back in your office with Johnson in front of Edlin and Robinson, about what [2031] a good job Johnson had done? A. I boosted him all I could. I hoped he could get a little money out of it. I imagine I did. I boosted him every way I could, because he had been up against it. That fellow worried him to death. He had to get him away from him."

Finally:

"Q. Edlin was worrying Johnson?"

(Mr. Williams) Is the last thing a question?

(The Court) The answer is "yes."

I think that is where he was going to stop.

(Mr. Tydings) The answer is "yes."

"Edlin was worrying Johnson?

"A. Yes."

The Government now calls Mr. Herbert J. Miller.

(Mr. Genn) If the Court please, I think the record shows

that this particular testimony is binding only in so far as Mr. Boykin is concerned.

(The Court) It was only offered against Mr. Boykin. That was my understanding.

Mr. Tydings said that at the very beginning and I understand that Mr. Williams was making no objection to it.

(Mr. Williams) I made no objection to the introduction of the evidence, Your Honor.

HERBERT JOHN MILLER, JR.

DIRECT EXAMINATION

By Mr. Tydings:

Q. Mr. Miller, where do you reside, sir? A. 10100 Chapel Road, Potomac, Maryland.

Q. And in what position or what capacity are you presently employed? A. I am the Assistant Attorney General of the United States in charge of the Criminal Division of the Department of Justice.

Q. How long have you been practicing law, Mr. Miller? A. I commenced the practice of law in 1949.

Q. And you were a partner in the firm of Kirkland, Dallas, Hodson, Chafitz and Masters before you were nominated as Assistant Attorney General? A. Yes.

Q. Had you served in any prior federal service prior to your nomination and confirmation as Assistant Attorney General? A. No, except for being in the Army in World War II.

Q. All right. As Assistant Attorney General of the United States, Mr. Miller, in charge of the Criminal Division of the Department of Justice, would you briefly outline your responsibilities to the ladies and gentlemen of the jury? A. The Criminal Division of the Department of Justice is given the supervisory power over all Federal Criminal

actions which are brought in the various District Courts throughout the country with certain exceptions such as criminal tax cases, criminal anti-trust cases, espionage and internal security cases and certain cases in the Civil Rights Field.

* * * * * *

[Tr. 2035-2039]

By Mr. Tydings:

Q. Excuse me, Mr. Miller. Before the interruption I believe I had asked you if you review you responsibilities as Assistant Attorney General of the United States in charge of the Criminal Division of the Department of Justice, and I would appreciate it if you would restate your answer for us. A. Well, as I stated before, the Criminal Division has supervisory jurisdiction over Federal criminal cases with the exceptions which I have heretofore outlined. There are approximately 150 lawyers in the Criminal Division. We work very closely in conjunction with the 93 United States Attorneys around the country in the various Federal cases which are brought.

Q. I am having difficulty hearing you. Would you speak a little louder or move the mike a little closer?

(The Court) Can the jury hear?

(The Witness) That, basically, is what the functions of my office are.

By Mr. Tydings:

Q. All right. Now, Mr. Miller, approximately when did you take office as Assistant Attorney General of the United States? A. The end of February or beginning of March of 1961.

Q. Now, directing your attention to the months of April, 1961 through November, 1961, did you ever have occasion to be contacted either in person or by telephone by either Congressman Johnson or Congressman Boykin about a matter then pending before the Department of Justice? A. I did.

Q. And what was the matter then pending before the Department of Justice?

(Mr. Genn) If the Court please, I am going to object to that characterization as "pending before the Department of Justice." That is a conclusion and it is a matter which was also pending in the Court and I think the characterization is improper.

(Mr. Tydings) I think the Assistant Attorney General knows what is pending before him as Assistant Attorney General.

(The Court) The legal point which you seek to make is one which the Court will have to pass on. I think I have already passed on it tentatively in the Opinion on the Motion to Dismiss. You have your point. You can raise your point at the appropriate time. Instead of saying "pending before" just say "before," Mr. Tydings, and it will not hurt your point if you make the change.

By Mr. Tydings:

Q. About a matter before you as Assistant Attorney General. A. Yes.

Q. What was that matter? A. This was an indictment pending in the District Court here in Baltimore against First Colony Savings and Loan Association, J. Kenneth Edlin and certain other defendants whose names escape me at the moment.

Q. All right, now, what did the Congressman contact you about in reference to said indictment in the period April 1961 through November, 1961? A. Well, they were in contact with me to present arguments, some economic and some legal in nature, as to why the indictment against J. Kenneth Edlin should not go forward and go to trial.

In addition to this, they did bring to my attention the fact that Mr. J. Kenneth Edlin allegedly had certain information about a stolen treasury certificate which I believe was negotiated in his favor by one Benjamin Dranow who was

allegedly an associate of James Hoffa. But the primary reasons for the visit were to present arguments in the nature of the fact that, for example, there was a colored housing development in Southern Maryland, that this housing development was being financed by J. Kenneth Edlin, or his association, that, if the case went to trial, the publicity would possibly cause a run on the savings and loan association and this would put the savings and loan institution in a position where they could not finance this very fine, as described to me, very fine housing development.

In addition to this, there were indications that it was felt by the Congressmen that the indictment was an outgrowth of what they described to me at the so-called "battle" in Maryland between the independent savings and loan associations and the Federal savings and loan associations.

Subsequently during the course of the meeting the case was discussed at length on the merits of—the various legal issues were gone into and this, of course covered a period from approximately April to November of 1961.

• • • • • •

[Tr. 2043]

Q. All right. Now, during this period, that is the period from April, 1961 through November of 1961, how many times did Congressman Johnson personally come to confer with you in your office at the Department of Justice? A. According to the records of my office, he came to my office personally to confer with me nine times, or was it eleven times? I am trying to recall.

Q. Approximately how many times? A. Approximately eleven times, it was.

Q. And during the same period how many times did Congressman Johnson, approximately how many times did Congressman Johnson come to confer with you in your office?

(The Court) That is the same question.

By Mr. Tydings:

Q. I mean Congressman Boykin, excuse me. A. I believe he and Congressman Johnson were in approximately eight times together.

Q. And the other three times of Congressman Johnson was when he was there alone? A. That is right.

* * * * * *

[Tr. 2058-2069]

By Mr. Tydings:

Now, ladies and gentlemen of the jury, I am going to read you Government's Exhibit 154, which is the original letter just identified by Mr. Miller to the Honorable Herbert J. Miller from Congressman Boykin, dated May 4, 1961.

This letter is the original of the copy which has just been offered in evidence Government's Exhibit 52-C. 52-C was originally identified by Mr. McKeever and subsequently identified by Mr. Kunkel.

Also, Government's Exhibit 90, which was identified by Mrs. Ferina, is a duplication of the attachment which is a part of Government's Exhibit 154.

I will now read this letter of May 4th, as well as all of the attachment, dated March 17th, and the attachment, as I have told you, is the same as Government's Exhibit 90, which Mrs. Ferina testified was similar to the one which she prepared in Congressman Johnson's office.

"May 4, 1961

"Honorable Herbert J. Miller
"Assistant Attorney General
"Department of Justice
"Washington 25, D. C.

"My dear Mr. Miller:

"I really enjoyed the visit of our mutual dear friend, Congressman Tom Johnson, and I had with you yester-

day, and I know we didn't hurt anybody, and I believe we can help an awful lot of people.

"I am enclosing herewith the statement that we talked about on Dranow. This statement was given to me by Tom Johnson. William L. Robinson, as you know, is Kenneth Edlin's attorney. I hope this statement will help. As I told you, I told the Attorney General about this, and he sent one of his very able men here, and I gave them this statement that I received from Mr. Kenneth Edlin some time ago, but I thought it would be good for you to have this, too. Now, as I understand it, Kenneth Edlin did pass this treasury bond for $10,000.00 on—not to himself personally, but to the people who put up the money to buy it, which I understand was a bank in Miami, I believe. However, I am not sure about this, but anyway, it was some bank, and the stockholders received the money, instead of Ken Edlin.

"Anyway, so far, nobody has lost any money on it unless it was the bank which furnished the money because they will, of course, have to make the bond good. I really think it would be a good idea for you to have a talk with Kenneth Edlin. He lives at the Woodner Apartments when he's in Washington. He's in New York now, as I understand, but I don't know his address there. I understand he will return here in the next day or two. I believe he could be very helpful on this and could give you some information that Tom Johnson and I could not. Anyway, here is the statement, and I believe it could be enlarged upon by Ken Edlin. I met Mr. Edlin through our mutual friend, Congressman Tom Johnson, who I consider one of the ablest men in the Congress of the United States. I know him well because our committee, the Merchant Marine and Fisheries Committee, made a trip for many, many long days and nights investigating the shipbuilding, the shipping and the many phases of the Merchant Marine and Fisheries Committee, and I see they

adopted the recommendations we made. Anyway, what Tom Johnson and I want is to be helpful, and I think this would be helpful, because if you could just give me some morning or afternoon, I'd like to drive you out to Waldorf and show you their spot which is larger than the City of Washington, so they tell me, with the railroad facilities, all doing nothing, and with the new Highway 301 and old 301 and hard surface roads all around and about 8,000 acres of beautiful land that belonged to the Hope Diamond people. Well, it's a great project, but if you have a gold mine or a diamond mine and don't develop it, it don't do you any good. And another thing out there is that the people are so wonderfully fine in every way, and they are just starving for some sort of development. They're about in the same shape they were when Booth assassinated Lincoln, but they are thoroughbreds, they have their pride, they have beautiful land and cattle, too. But with the present price of labor and with so many people not wanting to work, it's hard to make anything out of farming, because the price you have to pay makes what you grow cost more that what it comes to after it's all over with Ken Edlin has agreed to spend three and a half million dollars in developing this property, and that will just be a starter. Those wonderful people in and around Waldorf, Maryland, have gotten up a half million dollars to develop themselves a country club, a golf course, a hunt club and many other things, all of which Mr. Edlin has agreed to finance, but there's something that's already been done that pleases me very much, and I know it will you, too, and will please this entire administration. I wrote the Attorney General about it, and I'm going to write you, too, because I know we all have more than we can do in these troublesome times not only here but all over this world.

"I am enclosing you with this letter a brochure by A. I. Cassel Land Corporation, and Mr. Cassell is a Negro. He is an architect, and, as I understand it, he has been very successful. I never met him until last

Saturday afternoon, when Mr. Edlin and several of his associates invited me to come out and inspect the Chesapeake Heights, an outstanding international community. Now, please take a look at this brochure, and it could be the answer to so many of our problems. They have selected some of the most beautiful pieces of property on the Chesapeake Bay that I've ever seen, and they have spent a tremendous amount of money on it. Every bit of it is furnished by my friend, Kenneth Edlin. It's a revelation, and I think everybody would like it and ought to see it, because they are not hurting anybody, but are really and truly helping, and they'll have a place there where our Negroes in Washington can go if they can come up to the specifications which Cassell has for them to meet. Their waterworks system is one of the finest and most up-to-date I've ever seen. They've made a barren piece of land with scrub trees and broken down old shacks into a very, very beautiful site overlooking the bay, with high bluffs and with a beautiful clubhouse and just everything that you and I have in our homes and everywhere else." . . .

"In my judgment, he will complete his sales by Labor Day. He wants to put in a Marina, because many of our colored people have boats. Mr. Edlin has agreed to finance that, too. Anyway, the only way to properly appreciate this beautiful property is to go out there and see it. He said that the Good Lord and Mr. Ken Edlin had been awful good to him. Now, this man has been working on something like this all his life and is getting to be an old man, now, and his dream is coming true. He's very, very determined. I understand he's been offered $500,000.00 cash for his interest in this development, but I don't think he'd take anything in the world because all of his years have been put in trying to do this, none of which he could have done had it not been for Ken Edlin. Please do take a few minutes out and read this brochure and if you could get a little time, let's run out and let me show you this. I've been in the real estate business since 1904. As a matter of

fact, I guess we've sold more land than most anybody. We had in the Florida boom a million and a half acres, and we have an awful lot of land now. We have about five developments going on in our beloved Southland now, but none better than this wonderful man, Cassell, is putting on right out in Prince Frederick, Maryland.

"I wrote the Attorney General, Bob Kennedy, about this when I found it, the afternoon I returned from there. Do let's try and see it.

"I enjoyed seeing you, and I want you to come up and have lunch with me just any time and bring anybody you can and let me know if I can help.

"I had the joy and pleasure of handling President Kennedy's program in old city of Mobile, Alabama, which is not an old city, but a brand new one, now. We have over 200,000 people there on Mobile Bay that looks very much like this development out there in Maryland. Anyway, Ike carried Mobile, Montgomery and Birmingham both times he ran, and we lost Montgomery, the Capitol of the Confederacy, and we lost Birmingham, but thank the Good Lord, with the help of all of those fine people in Mobile, we gave President Kennedy a beautiful and wonderful majority that put Alabama on top and in the Kennedy column.

"This Kennedy clan is really a great group. I've known his famous father, Ambassador Joe Kennedy, for many, many long years, and in my judgment, Joe Kennedy is one of the outstanding and great and good men of this nation, and not only President Kennedy, but the Attorney General both are just chips off the old block. I know that in your case, he's selected a wonderful, fine man that will do an outstanding job.

"With every good wish, I am

"Sincerely yours,

"Frank W. Boykin, M.C."

This is a memorandum dated March 17, 1961, and has written across the top in longhand "Hon. Herbert S. Miller," and it is signed on the back "William L. Robinson."

"MEMORANDUM:

"A Mr. Ben Dranow called, during the summer of 1959, at the First Continental Mortgage Company in Miami, Florida, to discuss financing of the Sun Valley Project. Subsequent meetings were held at the office of the Koven Construction Company in Miami Beach, Florida. At these meetings Mr. Dranow represented that he and his associates, James Hoffa, Koven as the contractor, and other parties, were desperate to obtain immediate financing of the Sun Valley Project. It seems they desired to purchase the property from the receivership and that $100,000 was necessary to be deposited with the trustee in an escrow arrangement.

"Mr. Dranow was advised by the representative of the financing institution that they could not make unsecured loans and that escrow was out of the question. Mr. Dranow then was to give a mortgage on the office building known as the Fashion Mart Building which he allegedly owned and controlled with Mr. Hoffa and others. But, in a discussion it became apparent that the property was already encumbered and that this security would not be satisfactory.

"Mr. Dranow next requested a loan in the amount of $80,000, stating that he could raise the balance of the $100,000, and offered as security a U.S. Government Treasury Note. He was then advised that the lending institution could make loans only on real estate and not one secured by Treasury Note. At this point, negotiations ended with the understanding that there would be further discussion if Mr. Dranow could provide adequate security.

"Later, Mr. Dranow telephoned the office of First Continental Mortgage Company and represented that

he had found a source of adequate financing and did not desire to sell the Treasury Note. Subsequent to this telephone call, Mr. Dranow again contacted a representative of the mortgage company advising that the financing he thought he had arranged had not materialized and asked that the bond be purchased for the sum of $80,000.

"Mr. Goldman of the Mortgage Company arranged the transaction and Mr. Dranow sent the Treasury Note with two individuals to the banking institution to receive the funds. Two individuals appeared at the office of First Continental Mortgage Company in Miami and present at the time were Jackson D. Rains, Mr. Goldman, Mrs. Pearl Edlin, Mrs. Sadie Goldman, and the two individuals. This was in the later part of June, 1960. After Mr. Rains examined the Treasury Note, he stated that in his opinion it was a good note but the two individuals could not satisfy Mr. Goldman as to their identification. The transaction therefore did not take place.

"It may be noted that the two representatives stated that they were from the Teamsters Union and had been sent to the office by Mr. Ben Dranow. They left, stating they would be back the next morning with proper identification. The next morning, Mr. Dranow personally appeared at the mortgage company at which time the exchange was made wherein Mr. Dranow requested that a check for $80,000 be made payable to a Mr. L. Aleman. Mr. Goldman immediately sent the Treasury Note, air mail, special delivery, registered mail, to the purchasing corporation—First Continental Savings and Loan, Inc., of Chevy Chase, Maryland. Upon receipt, the bond was immediately deposited with the Bethesda National Bank for collection.

"Subsequent to the closing of the transaction, Mr. Dranow continued on behalf of himself and his partners to seek additional financing for Sun Valley, and offered as security mortgages on two shopping centers and the

Fashion Mart Building. Mr. Goldman checked the statement provided which disclosed that the anticipated income of the shopping centers was not sufficient to provide for repayment of the loan. The Fashion Mart Building was found to be in need of extensive renovation and the security was insufficient to substantiate the loan in question. The properties, therefore, were rejected.

"On March 6, 1961, the First Continental Savings and Loan Corporation of Chevy Chase, Maryland was advised by the law firm of Kardy and Brannan of Silver Spring, Maryland that the treasury note in question was owned by a Jules Marcus, and demand was made for either return of the note or the face value of same.

"William L. Robinson."

Finally, the letter of May 13th, which was identified originally by Mr. McKeever, the conservator of First Continental Savings and Loan Association. This is a letter on the official Department of Justice stationery, to the Honorable Frank W. Boykin, signed Herbert J. Miller, Jr.

"Dear Congressman:

"Thank you very much for your kind letter. I enjoyed very much talking with you and Congressman Johnson.

"I understand Congressman Johnson will be in contact with me in the near future.

"With best regards."

Then on the top you can see "Send Kenneth Edlin, F.W.B."

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[Tr. 2070-2117]

Q. Mr. Miller, I think we will proceed along the lines that the Judge suggested earlier this morning, and I direct your attention to the date April 14 and you may use the Government exhibit which you have in your lap. Were any appoint-

ments made with you on April 14 or with your office in connection with Congressman Johnson of Maryland? A. According to my records, Congressman Johnson called for an appointment on April 14.

Q. Was an appointment set? A. It was set for April 17 at 10 o'clock.

Q. Did you see Congressman Johnson on April 17 at 10 o'clock? A. Yes.

Let me make it clear, Mr. Tydings. I can not recall these specific dates. There are so many visits, so many telephone calls, I must rely necessarily on the record which was kept by my secretary.

Q. We understand that. You have no independent recollection of each specific date. You are relying on the record kept by your secretary? A. That is right.

Q. All right.

Now, directing your attention to April 27, do the records indicate any contact on that date? A. Yes, they indicate that Congressman Johnson's office wants an appointment for Congressman Johnson and Congressman Boykin.

Q. Was such an appointment made? A. On May 3 at 10:12, Congressman Johnson and Congressman Boykin were in to see me regarding the First Colony Savings in Maryland.

Q. Two days later on May 5 were there any contacts made? A. Congressman Johnson called my office at 10:25 in the morning, but I did not return the call.

Q. All right.

Now, on May 6, the following day, were any contacts made? A. I returned Congressman Johnson's call of the preceding day and there was no answer.

Q. Now, directing your attention to May 22, did Congressmany Johnson and Boykin visit you on May 22? A. Ac-

cording to my records, they saw me at 11 o'clock in the morning on May 22. 11:10 actually.

Q. Did you make a telephone call later on that same day? A. Yes, at 2:45 the record shows I called Congressman Johnson. "Did not reach him. Left word" and then finally talked with him at 2:50 in the afternoon."

Q. The following day, May 23, do the records indicate any contacts from either Congressman Johnson or Boykin? A. The records show Congressman Boykin called me at 2:25 and we talked.

Q. Directing your attention to June 5, did you receive any—

(Mr. Doub) Could I interrupt just a minute?

Could you ask him whether this means the Congressman Boykin called him or whether it means his office, or secretary called him.

(The Witness) I would have no knowledge whether it was the Congressman or the secretary because, of course, I did not take the call.

(The Court) Didn't the secretary testify, Mr. Doub, that the "T" meant, on May 23 that there was a telephone call put through to Mr. Miller?

(Mr. Tydings) That is correct and that they actually talked.

(Mr. Doub) I think she did, Your Honor.

(Mr. Tydings) That is right.

By Mr. Tydings:

Q. On June 5, now, do your records show there were any contacts by either Congressman Johnson or Congressman Boykin? A. Yes, the records show that Congressman Boykin called my office at 4:25 and left word, requesting that I call.

Q. And the following day on June 6 did you return Con-

gressman Boykin's call? A. Yes, at 9:23 I called Congressman Boykin but was apparently unable to reach him.

Q. Now, the following day on June 7, were any calls made, put through to you by either Congressman? A. Yes, the records indicate that at 11:14 Congressman Boykin called. We did not talk.

He called again at 1:35, saying he would call back and we talked at 6:50 in the evening.

Q. All right. Now, the day after that on June 8? A. On June 8 Congressman Boykin called at 10:43. I did not return the call.

Q. All right. Two day later on June 10. A. Congressman Boykin called at 10:35 and we talked.

Q. All right.

Two days after that on June 12 were there any contacts made? A. Yes, Congressman Boykin and Congressman Johnson were in to visit me at 11:30.

Q. All right, the day after that on June 13, were any contacts made? A. Congressman Boykin called at 10:05. I did not return the call.

Q. And the day after that. June 14, were any contacts made? A. Call was made at 1:15 requesting an appointment to see Congressman Johnson. This was set for the next day.

Q. Who called whom on that? A. Congressman Johnson called my office, or his secretary called my office for an appointment.

Q. Was an appointment set up? A. Yes, for the following day.

Q. And the following day, June 15? A. 10:15 Congressman Johnson and Congressman Boykin were in to visit me.

Q. And four days later, June 19 were any contacts made with your office? A. Yes, Congressman Boykin called, or I called him at 9:20 and we talked.

At 10:45 Congressman Boykin called me, left word he would call back after lunch.

At 1:55 o'clock Congressman Boykin called, said he was waiting at the Airport for H. J. Miller's call. We did not talk.

Q. The day after that, the next day on June 20. A. Congressman Boykin called at 11:11 and left word to call.

I did not return the call.

Q. Two days later on June 22 were any contacts made? A. Congressman Boykin called at 10:45 and again at 10:55.

Neither calls did I return.

Q. June 23, the following day were any contacts made? A. Congressman Boykin called at 3:43 and we talked.

Q. All right. Three days later on June 26, was your office contacted? A. At 10:30 someone from Congressman Johnson's office called and asked for an appointment to see me, the following day.

Q. Was such an appointment made? A. Yes, on June 27 at 11:07, Congressmen Boykin and Johnson came in to visit me.

Q. Do your records show how long they stayed? A. It shows they came in a 11:07 and left at 11:54.

Q. All right.

Directing your attention to July 5, was your office contacted? A. Congressman Boykin called at 9:50 and left word to call. I did not talk to him.

Q. All right. July 14, do your records show that any contact was made? A. Congressman Johnson at 12:03. I did not return the call.

Q. July 28 were any contacts made? A. Congressman Johnson called at 9:30 and left a message that he would call back Saturday or Monday. I did not talk to him.

Q. August 1, were any contacts made? A. 10:35 in the morning Congressman Johnson called and we talked.

Q. On August 4, did you talk to Congressman Johnson on August 4? A. I called either the Congressman at 10:24 or his office to postpone an 11 o'clock appointment that I had with him.

Q. August 7, did you have any visitors on August 7? A. Congressman Johnson was in to see me at 10:07 in the morning.

Q. All right.

August 24 were any contacts made with your office? A. Yes, at 11:33 Mr. Lucas from Congressman Boykin's office called. I did not call him back.

(The Court) Isn't that the one on which there was testimony?

(The Witness) I would exclude that.

By Mr. Tydings:

Q. That was the one which had nothing to do with the Edlin case? A. Yes.

Q. Another matter entirely? A. Yes.

Q. Did you receive any other contacts on August 24? A. Yes, Congressman Boykin called at 2:35 and we talked.

At 5:28 Congressman Johnson was in to visit me.

Q. All right. August 31, were any contacts made with you? A. Congressman Boykin called at 2:15 and we talked.

Q. On September 8 were any contacts made? A. Yes, at 10:20 Congressman Boykin called. Called again at 12 and finally we talked at 12:08.

Q. All right, the following day were any contacts made? A. 10:07, a call from Congressman Boykin was referred to my office from the attorney general's office and we talked at 10:16.

Q. Three days later on Sept. 13 were any contacts made? A. At 3:33 Mrs. Kiernan in Congressman Johnson's office called for an appointment either Wednesday or Thursday.

Q. Right. The next day, September 13, did your office call? A. My secretary called Mrs. Kiernan in Congressman Johnson's office to set an appointment for the following day.

Q. And the following day, September 14, did you keep that appointment? A. Yes. Congressman Johnson and Boykin were in and they were in from ten o'clock to 11:25 Subsequently that day at 2:40 in the afternoon Miss Smith delivered an envelope from Congressman Boykin's office. Actually it was a 2:47.

Q. 2:45 in the afternoon? A. Yes.

Q. All right. The following day on September 15, did you talk to Congressman Johnson? A. At 9:36 in the morning I called Congressman Johnson and we talked.

Q. And the following day on September 16 were any contacts made with your office? A. Yes, Congressman Boykin called and left word to please contact him in Congressman Johnson's office, and I talked with him at 10:23.

Q. Three day later on September 19 were any contacts made with your office? A. Congressman Boykin called at 5:45 from the Democratic Cloak-room of the Speaker's office. I did not call him back.

Q. On Sept. 20, were any contacts made? A. At 10:13 Congressman Boykin called and left word to please call back. I did not call him back.

Q. The next day, September 21, were any contacts made? A. At 10:15 Congressman Boykin and Congressman Johnson were in to see me.

Q. Directing your attention to October 10 were any contacts made with your office? A. Yes, Congressman Johnson called at 11:55, and we ultimately talked at 12:12.

Q. All right. Two days later were any contacts made with your office? A. Yes, Congressmany Boykin called from New York at 10:10.

He called back again at 11:05 and called back apparently at 4:30.

The records show that we talked at 4:35 or 4:34.

Q. Four days later, on October 16 were any contacts made with your office? A. Yes. Congressman Boykin's office called and said he and Johnson wanted an appointment at 5 o'clock.

Q. Did they come in that same day, Oct. 16? A. At 5:30 that day Congressman Johnson and Congressman Boykin came in.

Q. All right, two days later on October 18, were you contacted or was your office contacted? A. Yes, Congressman Boykin called at 10:35 and said it was very important and asked me to please call.

We talked at 3 o'clock in the afternoon. At 3:45 he called again and we talked at 4:07 that afternoon.

Q. All right.

Two days later on October 20 were any contacts made with you or your office? A. At 3:30 in the afternoon Congressman Boykin called.

He called again at 3:40. Left word that he was leaving home. Please call at his office.

He was leaving for Jacksonville at 4:35 and wanted a "report from H. J. M. before he went."

I talked to him at 4 o'clock.

Q. October 23, three days later, were any contacts made with your office or with you? A. Yes, Congressman Johnson apparently called at 4:37. Again at 5:03 and we talked at 5:07.

Q. Two day later on October 25 were any contacts made with you or your office? A. Congressman Boykin called at 12:33 and 4:02.

He was calling from Mobile, Alabama. We talked at 4:13.

Q. All right, and again on October 30 were any contacts made with you or your office? A. Congressman Boykin called me at 3:53 and we talked.

Q. On November 21, were any contacts made with you or your office? A. Yes, at 10:35 Congressman Boykin called and left a telephone number in Mobile, Alabama. He called again at 4:35—4:38 and ultimately I returned his call at 5 o'clock in the afternoon.

(Mr. Doub) Mr. Tydings, there are other calls here.

(Mr. Tydings) We were not going to read them all but since you bring them up, we perhaps had better do it.

By Mr. Tydings:

Q. Directing your attention to December 11, 1961, were any contacts made on that day? A. Yes. At 12:40 Congressman Boykin called from Mobile, Alabama. I did not return the call.

Q. And on December 12 were any contacts made? A. On December 12 Congressman Boykin called me at the office at 5 o'clock. I returned the call at 5:22 but the calling number was out of order so we did not talk.

Q. Now, Mr. Miller—

(Mr. Doub) You have there two more.

(Mr. Tydings) They do not deal with this matter.

(Mr. Doub) You put them in evidence; now read them to the jury.

(Mr. Tydings) Mr. Doub, you can put anything you want in your case but we are concerned with those telephone calls and contacts made in connection with the dismissal of Edlin's indictment.

By Mr. Tydings:

Q. Now, Mr. Miller, directing your attention to the early spring or the spring and summer of 1961, you have read or testified to the jury about a number of visits including a visit on May 3, by Congressman Johnson and Congressman Boykin. To the best of your recollection what was stated to you by the Congressmen in these early visits in question—well, in these early visits, period? A. I would like to get something clear and that is that I do not have an independent recollection of everything that was said in the course of each of these telephone calls and each of these meetings. I can tell you the gist and substance of what went on but I cannot give you a verbatim account of who said what.

Q. What is, the best of your recollection, the substance of what was stated to you by the two Congressmen in their visits in the early summer and late spring of 1961?

(Mr. Doub) Which one?

By Mr. Tydings:

Q. Both Congressmen Boykin and Johnson.

The meetings in the spring and early summer, April 17 when Congressman Johnson was in and then May 3 when Congressman Johnson and Congressman Boykin were both in? A. Under the best of my recollection the following points were discussed. The Congressmen came in and there was a discussion, much of the discussion centered around this housing development in Southern Maryland.

I am pretty sure they referred to it as Boykin City. Then also they referred to a housing development by the name of the Cassell Development.

They discussed the fact, particularly Congressman Boykin, who apparently had been there, discussed the fact that this was a very wonderful development. He, apparently, had personally been to see it. That it was going to be a development which would be open to members of the

colored race, and that no such development was available in Maryland and, to his knowledge any way, and that J. Kenneth Edlin and/or his savings and loan association, I do not know which, were going to finance this housing development and that it would be a severe loss to the community if the financing did not go through. And, if there was ever going to be a trial of J. Kenneth Edlin, the publicity would be such that there would be a run on the, potentially a run on the accounts of the savings and loan association and then financing would just be impossible to make to this housing development.

Now, also, Congressman Johnson discussed either during this meeting, or, I am sure it was this meeting, but it ran all through the various meetings, the fact that there had been trouble over in Maryland between what he called the "independent" savings and loan associations and the "Federal" savings and loan associations.

The implication, if not the accusation was left that this indictment of J. Kenneth Edlin was either caused by disgruntled employees of Edlin or was in fact an outgrowth of animosity that existed between these two groups of savings and loan associations.

Some time along in this period, I do not recall if it was this meeting or one of the other meetings, passing mention was made of the fact that there was trouble with the FHA. They would not give Edlin or somebody a commitment. I did not pay any attention to it. I could not make any further details out of it.

Q. Did Congressman Johnson comment to you about any economic repercussions if the case went to trial, the Edlin case? A. Well, there was discussion of what a great thing this development that we were talking about would be for the economy of Southern Maryland.

Congressman Johnson pointed out that—I think he said that his district was a depressed labor area and development of this type would be a tremendous economic boon for the people in his district, his constituents.

Q. Now, when was the first time you learned that neither of these housing developments was located in Congressman Johnson's district? A. About two months ago.

Q. And did Congressman Boykin comment to you anything about Mr. Edlin in these initial visits? A. Well, throughout this period of time Edlin was referred to as a very fine, upstanding man; one who was a veritable genius in real estate dealings and one who could do a tremendous job when it came to setting up housing developments and a man who was willing to spend tremendous sums of money to further these housing developments.

Q. Directing your attention to the May 3rd meeting, Mr. Miller, did Congressman Boykin at the close of that meeting make any reference or suggestion to you about the possibility of a trade in connection with Mr. Edlin's cooperation on the Florida investigation, his Florida investigation?

(Mr. Doub) Object to the form of that question.

By Mr. Tydings:

Q. Did anything unusual happen as you recall on May 3 at the end of the meeting? A. I do not recall any trade, Mr. Tydings. Right at the end of the conversation—the reason I can place it at this particular meeting—frankly, is because Congressman Boykin wrote me a letter the next day. He brought out—I think I mentioned at the meeting, there might be a problem with Edlin because of the one hundred thousand dollar treasury certificate which at that time the Department had been investigating. It had been stolen, sometime before, and had shown up in Miami and ultimately was deposited at the bank outside of Washington, D. C. And indications were that Edlin had in fact received that $100,000 certificate. As I recall, I mentioned this to Congressman Boykin, of course Congressman Johnson was there, and he said, well, that man can help you with Jimmy Hoffa.

And he indicated as if he were trying to hold a carrot out in front of my nose, and he said "No, I have a memorandum I am going to send you."

The next day he sent this letter and wrote this memorandum which you have read to the jury. This is the same memorandum which had been supplied to the Attorney General through one of his assistants some time earlier and I had not seen but that is my knowledge of it.

Q. All right. Subsequent to this May 3rd meeting and after your receipt of the memorandum in Congress—attached to Congressman Boykin's letter of May 4, was Mr. Edlin interviewed in connection with the treasury note and the facts which have been set forth? A. Yes, the two Congressmen came in and that probably would be the meeting of May 22 because I believe it was that afternoon that Edlin was interviewed by one or two attorneys in my division.

Q. Now, directing your attention to the month of June, do you recall a visit by Congressman Johnson and Congressman Boykin when you had advised them that you had been advised that Mr. Edlin had a prior record? A. Yes, I recall, I got the report of the post office inspector before they called at my office and was going to read it or did read the file to find out what the case was about and I stumbled on a statement in there that J. Kenneth Edlin had had difficulties on more than one occasion.

The file related that he had been—

Q. Tell the jury what you told the Congressmen about that. A. So at the time when the Congressmen came in, related to them the fact—in fact, I thing I let them read the excerpt of the report which told them in this report that J. Kenneth Edlin had been convicted of either mail fraud or violation of the Securities and Exchange Act in 1941 and that he had also been convicted in the late thirties and that he had been associated with a savings and loan association out in the midwest some place which I think had been placed in receivership. So that—

(Mr. Genn) The same objection, Your Honor, previously stated.

(The Court) Overruled.

(The Witness) So, I told the Congressmen in effect, that I did not think that Mr. Edlin was the type of individual which deserved any sympathetic consideration by the Department of Justice.

They were surprised, expressed surprise and said they were sure that the records were wrong and that they were going to talk either, I guess to Mr. Edlin about it and let me know what they found out.

Q. All right.

Now, three days later did you have an unusual meeting in your office, an unusual series of events that would be June 15? A. Yes, June 15, the two Congressmen came in and had a third individual with them. To my great surprise they introduced him as a Mr. Meyer from the Probation Department out in Chicago, Illinois and they had brought him to tell me that the Department files were incorrect. At least as to the first conviction I mentioned. And that Mr. Edlin's involvement—

(Mr. Doub) Just a minute, Mr. Miller. Are you testifying to what they said to you?

(Mr. Tydings) Yes.

(The Witness) Yes, sir.

(Mr. Doub) All right.

(The Witness) Mr. Doub, this is, to the best of my recollection and understanding—and under no circumstances am I trying to give you the accurate word-by-word account of what was said—I can only give you the substance of what went on because there were so many meetings I could not possibly remember all of them. He was going to tell me about the savings and loan situation that Edlin was involved in out in the Midwest and I told him "Well, frankly, I do not have time to sit and interview you. I will arrange to have one of my attorneys talk to you" and I called one of my lawyers and Mr. Meyer was then taken down and interviewed by him.

By Mr. Tydings:

Q. Directing your attention to the end of August of 1961, did you have a meeting towards the end of August with either of the Congressmen which stands out in your mind or which was a little out of the ordinary? A. Well, I had a meeting at the end of August, about August 24 at 5:28, that is the one, that was the meeting I had with Congressman Johnson. It was a rather lengthy meeting. I imagine the meeting ran from 2 to 2-1/2 hours. I had talked to the Cangressman before this meeting. I do not recall when it was. I offered to go over with him the legal issues which were a part of the mail fraud indictment against J. Kenneth Edlin or in Baltimore. And before he came in I got the Department of Justice file and actually studied the case. When he came in, we spent, it must have been at least two hours, going over point by point the various points of the indictment in the case of J. Kenneth Edlin.

I can remember we discussed the issue of whether or not the utilization of the phrase "current dividend" in the savings and loan advertisements was misleading in view of the fact they had declared dividends at a time when there were no depositors. I think First Continental was the only stockholder and they declared a dividend.

Q. Is that the First Continental Mortgage Corporation? A. I believe so. I do not know. First Continental, the one down in Florida. They had declared a dividend when First Continental was the sole stockholder and, I am not sure, I think the dividend was in fact—

(Mr. Genn) If Your Honor please, Your Honor has instructed the jury—This man is going far beyond the particular matters involved in this case. You have instructed the jury previously that the savings and loan matters have nothing whatsoever to do with this case.

(The Court) Mr. Genn, this is an alleged overt act in furtherance of the alleged conspiracy. Your objection is overruled.

Visit by Mr. Johnson to Mr. Miller is an alleged overt act in pursuance of the alleged conspiracy. It is admissible.

By Mr. Tydings:

Q. Mr. Miller, before you go on, how much time did you spend getting ready or reviewing the files in preparation for Congressman Johnson's visit, just approximately? A. Oh, I would assume from the size of that file, it probably had taken me around four hours, maybe five or six.

Q. Forgive the interruption. Go ahead with your testimony. What took place at this meeting? A. Another issue we discussed at the meeting was there was a check transaction between First Colony and this fellow Cassell that had this housing development that had been discussed before and what had happened there was a loan by First Colony to the Cassell development of I think $400,000-some odd and as a part of this, Cassell was supposed to repay some $300,000 of it, I think, $150,000 immediately and another $150,000 shortly.

Q. Repay it as what? A. To the First Colony.

Q. Repay it as what? A. As a commission. Now, at the time those checks were—at the time one of the $150,000 checks was drawn—which went to the Cassell Development from First Colony according to the check book of First Colony Savings and Loan, there were insufficient funds to honor the check for $150,000. Mr. Cassell had a very small amount in his checking account. Nowhere near enough to honor the $150,000 check that he wrote and gave back, I believe it was, by return mail. So, I told the Congressmen that, as far as I was concerned, to all intents and purposes, this was nothing but a wash transaction between First Colony and Cassell and that it was done obviously for the purpose of creating income to First Colony. Now, the reason that was the problem, First Colony had been losing money and they had had problems in that they were declaring dividends not out of

profits but what they had to do was they had to capitalize expenses and then turn around and declare dividends out of deposits that had been made with First Colony Savings and Loan rather than actually making a profit and then paying out their dividends from the profit.

We discussed each of these points. I think the Congressmen agreed that it was a very complete discussion and I told them at the time the meeting was over with that I was convinced now that it was a good case and that I did not see any choice but what the department would have to go ahead and prosecute.

During the conversation, Congressman Johnson would point out in effect what the defense would be by J. Kenneth Edlin in the event the case did go to trial. I will see if I can remember anything else about that meeting.

One other thing, I remember distinctly because I know I wrote a letter to him afterward. He made the point which was not a bad one. He made the point that none of the depositors of First Colony had at that time suffered any loss. Therefore, no one had really been damaged. Therefore, why proceed with the case?

I told him it was my understanding of the law that even though there was no damage, if there were in fact a fraud committed, that would justify us continuing with the prosecution.

I subsequently wrote him a letter and cited him a case to that effect.

Q. Did Congressman Johnson make any comments about whether or not anything was actually illegal or not, any of the activities of Mr. Edlin and the First Colony? A. No, I think his position was that most of these actions by First Colony, like the advertising and the like might be improper, might be close to the line but were not in fact a violation of any of the mail fraud statutes.

Q. All right, now subsequent to this August 24 meeting were you ever given any photostatic copies of bank state-

ments of First Continental, rather of the First Colony Savings and Loan Association in connection with this $150,000 wash check transaction? A. As I recall, and there is a letter in the file some place on this—Congressman Johnson wrote me a letter and I think he enclosed a copy of the bank statement of First Colony Bank account which purported to show that os of the date of this $150,000 check, there was sufficient funds on hand in the bank to honor the check, even though the check book showed they would have been substantially overdrawn if that $150,000 check had actually gone through.

Q. Had the conflict between the check book and the bank statement been discussed in the meeting of August 24, between you and the Congressman, Congressman Johnson, if you recall? A. Well, in view of the fact that he sent me the document, I would assume so.

Q. Now directing your attention to the fall months following the August 24th meeting, were you contacted any further about this matter of the Edlin indictment by either Congressman Johnson or Congressman Boykin or both? A. After this meeting?

Q. Yes. A. Oh, yes.

Q. Did they make any new suggestions to you as to any course of conduct in connection with the Edlin prosecution or indictment? A. Well, somewhere along about this time. I cannot pinpoint it exactly, I remember I had a call from the Attorney General. He wanted a memorandum on the case. I sent it up to him. Sent a memorandum up to him and then the suggestion was made, by—well, now, I am quite sure by Congressman Johnson, would there be any problem in having someone undertake an independent review of the case against J. Kenneth Edlin.

Q. Other than you, you mean? After the Aug. 2 meeting? A. This is after the August 24th meeting.

Q. What steps if any, did you take? A. My recollection is I agreed to do it. I called you and it was decided

that the First Assistant in your office here would make an independent review of the case and send a report on the case to me.

Q. And was such an independent review made? A. Such an independent review was made and there was subsequently a meeting in October, October 20, I think it was, when your first assistant, Mr. John Hargrove, Mr. Robinson, Mr. Kossack, who is the head of the fraud section of the Criminal Division, Mr. J. C. Anderson who was an attorney practicing law here in Baltimore, I understand, came in and we had about a two-hour meeting again going over the merits of the mail fraud case against J. Kenneth Edlin and at the conclusion of the meeting I sent a note to the Attorney General that we all agreed we should go ahead with the case and that was the consensus of the representatives of the Department that were present at the meeting.

Q. All right, now, during the period in the fall of 1961, while you were being contacted, was the Attorney General, Mr. Kennedy, being contacted in this period by either Congressman Johnson or Boykin to your knowledge?

(Mr. Williams) How does he know?

(The Witness) I assume the record would show that, Mr. Tydings.

(The Court) Isn't that secondary evidence of that? The Attorney General testified.

(Mr. Tydings) All right.

By Mr. Tydings:

Q. During the fall period did you supply any memorandums on the case which you prepared, did you supply any such memorandum to the Attorney General, Mr. Kennedy? A. Yes, it was right shortly after the meeting I had. The evening meeting I had with Congressman Johnson, I received a request from the Attorney General for a memorandum on the First Colony case. It was about the

first week in September, I had one prepared and sent up to him.

Q. All right, now, during the period — the fall of 1961, was any offer ever made to you by either of the Congressmen to consider the possibility of having the First Colony Savings and Loan Association plead guilty and have the case against Mr. Edlin and the other defendants dismissed? A. Well, there was discussion. I cannot pinpoint when it was. But there was discussion of the possibility of Edlin either pleading nolo contendere or of Edlin—the case being dropped against Edlin and the corporation plead guilty and be fined.

I remember we discussed that but the problem with the latter that I had aside from Edlin, was the fact that depositors of the Corporation would then bear a fine that would be imposed upon the corporation which I did not think was fair.

Q. Do you recall who was present at that meeting to the best of your knowledge and recollection? A. Mr. Tydings, I really cannot. I would like to but this—I am sure I discussed it with Congressman Johnson but whether Congressman Boykin was there or not, I just could not say.

Q. All right, now, directing your attention to the fall of 1961, particularly towards the late fall, was there any noticeable change in tactics or request being made to you by Congressman Johnson and Congressman Boykin in connection with the indictment? A. This is in the fall?

Q. Yes, particularly November of 1961.

(Mr. Doub) Is this November, 1961?

(Mr. Tydings) Yes, November.

(Mr. Doub) Mr. Johnson left the country October 24.

(The Court) Do you want, Mr. Tydings, to lead him enough to tell him what he wants? The subject he wants him to talk about having Mr. Tydings trying to avoid

leading him but I think he can at least tell him what the subject is.

By Mr. Tydings:

Q. Did there come a time instead of a request for a consideration of an actual dismissal of the case against Mr. Edlin the suggestion was made for delay or postponement of the case, Mr. Miller? A. Yes, it was towards the end. This, as I recall, was Congressman Boykin who suggested that a delay in the trial of Mr. Edlin would be helpful. And this would probably have been in the November area. I do not recall that we were discussing this with Congressman Johnson.

(Mr. Tydings) May I have this marked, please?

(The Clerk) For identification?

(Mr. Tydings) Yes.

(The Clerk) Government exhibit 155 marked for identification.

(Government exhibit 155 marked for identification.)

Q. Mr. Miller, I show you Government's Exhibit 155 for identification and ask you if you would take a look at it and whether or not you can identify it? A. Yes, this is a copy of a letter that Congressman Boykin wrote the Attorney General. This is a copy delivered or he had delivered to me.

Q. Is that a letter which you received as Assistant Attorney General in the ordinary course of business of your office at the Department of Justice? A. Yes.

(Mr. Williams) From whom?

(The Witness) I don't know from whom. I assume it ended up on my desk like my other mail does. I have no knowledge of who actually delivered it, whether the postman delivered it.

By Mr. Tydings:

Q. Is there any writing on the top of that letter? A. Yes, there is.

Q. Is there a signature actually on the photostat? A. Yes, sir.

Q. Whose signature is that? A. It purports to be Frank W. Boykin.

(Mr. Doub) What is the date on it?

(Mr. Tydings) November 6, 1961.

It was marked for identification two days ago.

(Mr. Williams) Your Honor, this appears to be precisely the same letter the Attorney General identified as Government's Exhibit 122 the other day when he was here. Now, as I understand it, this is a copy of the letter. I have no objection to it going in, but I see no reason for it going in twice.

(The Court) It was simply marked for identification.

(Mr. Tydings) I am going to ask that they both be marked. One was sent to the Attorney General and one to the Assistant Attorney General.

(The Court) It need not be read twice.

(Mr. Tydings) Certainly not.

(Mr. Williams) By whom was it sent? That is the question. Did it come in the mail, or was it sent down from the Attorney General, is the question.

(Mr. Tydings) This was a personal copy received by Mr. Miller.

(Mr. Robinson) Mr. Miller didn't say so.

(The Court) He said it came to his desk and he doesn't know how it got on his desk.

(Mr. Williams) I think that is what is important here, Your Honor.

(Mr. Tydings) If Your Honor please, as Mr. Williams can see this is a photostatic copy of the letter which went to the Attorney General. However, it is handwritten in ink, and Mr. Williams knows the signature and handwriting on the photostatic copy of the letter, which would indicate that it is not a photostat of the letter which the Attorney General received as such, but rather a photostat of an original letter, and this copy was actually signed by Congressman Boykin and sent along to Mr. Miller at the same time the original letter was delivered to the Attorney General.

(Mr. Williams) It is the same letter.

(Mr. Tydings) That is right.

(Mr. Williams) Is there any difference in the letter?

(Mr. Tydings) No difference.

The Government would like to have Government's Exhibit 122 and 155 marked in evidence at this time. I will only read one letter, naturally.

(Mr. Robinson) I object to the entering of both of them. They are verbatim the same, according to the United States Attorney. I see no justification for putting the same exhibit in twice.

(The Court) Instead of marking it 155 we will mark it 122-A, and I think the confusion will be avoided.

(Mr. Tydings) Fine.

(The Clerk) Government's Exhibit 155 marked for identification now marked as Government's Exhibit 122-A in evidence. Government's Exhibit 122 marked in evidence.

(Government's Exhibits 122 and 122-A were received in evidence.)

(Mr. Tydings) Ladies and Gentlemen of the Jury, Government's Exhibit 122-A, which you have just heard identified and described, is a photostatic copy of a letter on the stationery of the Congress of the United States,

marked personal and confidential, to the Honorable Robert F. Kennedy, Attorney General of the United States.

"My dear Bob:

"I flew from north Alabama where I have been speaking. We, in Alabama, are running at large. They have some kind of plan which is an 8-9 Plan. We and fifteen other states will have to run at large unless the Governors of these states call special sessions of the legislature and have the states redistricted. Arkansas did this; I am hoping that Chicago and Pennsylvania will do this, and all of them. I certainly hope we can do this in Alabama but there is no indication that we will so we first have to run in our district, the whole nine of us in our old districts with only eight to be elected, and then if all of the nine Congressmen are elected or if someone else is elected in their place then the whole nine will have to run at large in the whole darn state and one will be eliminated. Quite a burden, isn't it? As I have said, there are sixteen states in the same fix and very important states for the Democratic Party. I am fearful unless we do something drastic and at once, a lot of the greatest Congressmen that have served and been trained there down through the years will not be re-elected and as a matter of fact, will not run.

"The Dean of the Illinois delegation, the great Tom O'Brien, who I have served with over a quarter of a century, told me that he wouldn't think of running at large and so did Congressman Libonati and so did Bill Dawson and so many others in that state. They only lost I think, by about 700 votes. They tell me that a lot of the people they tried to interview when they were taking the census thought they had warrants for them and hid.

"Well, we would not have had to be redistricted here, but there is so much water, the beautiful gulf and the bay around here, there were many people missed being counted who were out fishing.

"Congressman Frank Chelf of Kentucky has a bill in that he presented to the Judiciary Committee that would

remedy the entire proposition. I am sure that you know about it, but if you don't, I will be glad to send it to you or you can have it looked up for you and it is in my office there in the Capitol and they will be glad to send it over. I put it in the Congressional Record and had a good deal to say about it and sent out many thousands of copies. Sam Rayburn was agreeable to it after he understood it, but he was sick, so very sick, and asked me to send it to him, which I did in Bonham, Texas, and asked me to call him Sunday several weeks ago and when I called he had gone to the hospital, so I guess he never saw it. His sight, as you know, had been doing him very, very badly.

"Anyway, there were 160 Congressmen that signed the discharge petition which is quite a crowd. They are very much upset about this and I would hate to lose the men in Chicago. Congressman Francis Walter, another staunch and great and good man who has been there many long years told me he could not run under any circumstances that it would cost him $26,000.00 to mail just one letter to the voters of that state. So you see, it is a pretty terrible thing. Frank Chelf's proposition is to take on a few more Congressmen. The Congress has been changed thirteen times. I believe this is covered in his bill, but I don't have it before me. George Washington was the first one that did this, and it came right on down through the changes ever since we had this country. I understand we haven't had it changed now for fifty years. There is no country in the world that has their Congressmen or Representatives in the same category as we to represent as many people as we here in our Congress represent: I mean England, France, Italy, Germany, or Japan. There are not many people that like to sign a discharge petition. I know I don't, but I have signed this. The Chairmen of thirteen committees have signed this petition so you know how important it is. I hope we are having this looked into. We could call a special session and remedy this, or when we meet in January we could bring this up and four or five of the men that expect to be Chairman have agreed that they will do this, and at that time this could be reme-

died. In the meantime though, the race is going on, fast and furious and at a very, very expensive rate and many, many of our true and tried men who are Chairmen of Committees and way up the line will not attempt to run at large. I believe you should put a group on this and hard because in my judgment, it is very, very important. Our opponents have some pretty good plans on this all of which I will tell you about when I see you.

"I have sent, besides sending it to Speaker Rayburn, many, many prominent men throughout this nation, copy of the Frank Chelf bill, and my remarks on same and the remarks of many other men in Congress. I sent your famous father this plan also, along with many, many others.

"Thanks, Bob, for your letter in answer to my memorandum on the Kenneth Edlin matter. I am glad that you found what I told you were facts. Ken Edlin answered every question that was asked him in Miami. Maybe they should have asked him other questions. He stands ready to answer them now or at any other time. He has and will be ready to help you on this matter and it may be as you mentioned that you will have him interviewed again. I think this might be a good idea. You might talk to the man that handled this matter. Some of my friends in Florida that know all of the facts thinks that Mr. Edlin is your most important witness. Jack Miller, your able and wonderful assistant has been grand on everything, but I am afraid the D.A.'s office in Baltimore has not and do not intend to cooperate with him on this. I do not believe the D.A. knows of the cooperation Edlin is giving in the most important matter. If he does not, don't you think you should tell him all the facts. Kenneth Edlin was introduced to me by our mutual dear beloved friend, Congressman Tom Johnson of Maryland. Tom thought before he had left, he had arranged for Edlin's matter to be put off until January 20th or thereabouts, at which time, Congressman Johnson and his foreign affairs committee will return from across the seas. But, I understand the D.A. wants this matter to come up December 4, 1961. Edlin is asking a continuance until thirty some odd days

later and he is doing this on account of a great deal they have made to sell the Waldorf, Maryland land to one of yours and my good friends and as an associate from Westport and Greenwich, Connecticut, Francis J. Finneman. Frank Finneman is a good friend of the President and his help was wonderful on the presidential campaign. Frank and his partners are successful builders and developers. The cost of the land and the improvements they are buying comes to $22,200,000.00, and there is deposited in the Baryland banks $3,000,000.00 (three million dollars) for the development alone.

"All of the people in Waldorf, Maryland, and La Plata from the Government up and down want and need this so badly. Papers from Edlin's group are drawn and signed by the Finneman group and the Connecticut group has put up a certified check as a binder to be turned over to close the deal when their lawyers have checked the lands on 13,000 acres. Thirteen thousand acres with four lots to the acre would amount to 52,000 lots. They figure these lots will amount to from $3,000.00 to $6,000.00 a lot, but just put them at $3,000. It will be $156,000,000.00, and a beautiful new city down between Waldorf and La Plata, Maryland. You, as a lawyer, know it will take at least sixty days or more for the Connecticut men and their lawyers to check their titles on 13,000 acres of land. All parties are concerned that if they start a suit before that is done that the papers as usual will have a lot of publicity, and will ruin the great development and maybe start a run on the banks that have made the $3,000,000.00 loan on the development there in Maryland. These banks and building and loan companies are in great shape and are making money and all stockholders are more than satisfied. There has just been a new check-up on the banks by the outstanding accountants of that part of the country; Governor Tawes has a copy of this statement now.

"So you can see the facts, these people that Edlin was agent for sold this property for over $10,000,000.00 more than they paid for it. Think of the great profit the people in these building and loan companies make out of this

alone. I know what I am talking about, because Colonel Albert Ernest, one of my associates, sold this property to the Charles Land Company and the Leisure Land Company for about $10,000,000.00 and these two companies have now sold it to the Connecticut men who are very outstanding in their profession of building and developing for $20,200,000.00. See what these wonderful stockholders and the building and loan companies have made and will make on the profit. These are the ones that they are objected to. I don't know of anything or anybody that could make money any faster than that and in such a short time.

"There is no doubt about it, if this trial was held on December 10th and if the trial was started on December 4th, and if there was a lot of pubicity, and if there should happen to be an unnecessary run on these building and loan companies, it could ruin this great development. As I told you, the lots alone would sell for about one hundred and fifty six million dollars, think of the thousands of homes that could be built there. It would be a development that I understand would amount to a great deal more than the three hundred million dollars or maybe a half billion. It is something that all the people there want with all of their hearts, as it is a very dead place, and has been for a long, long time. This is the old McLean (the Hope Diamond people) beautiful property there. It would be like bringing the dead to life. According to the Secretary of Agriculture in Maryland, this tract of land, between Waldorf and La Plata is one of the richest and finest pieces of property in the country. As a matter of fact, Governor Tawes says it is the largest undeveloped single tract in the entire State of Maryland and something should be done with it. The arm of the Pennsylvania Railroad runs four miles through this property. There are highways on all four sides and through it. The old 301 goes clear through the property and the new 301 goes through it. There are eleven hundred and some odd acres on one side of this beautiful road and about seven thousand acres on the other, going to the great Navy Base at Patuxent

where they have such a tremendous development and where there are about fourteen thousand people employed in hte government projects alone, each one coming to Washington or going anywhere to come by Waldorf. It's just a hub of that part of our great state, and I understand Maryland is the fastest growing state in this nation at this time.

"Our mutual dear friend, Congressman Langsdale Sasser of Marlborough, Maryland, is very much interested in the development down there, as you know, and I spoke to him about this and he said he was sure we could get the District Attorney, the Honorable Joe Tidings, to give them this short continuance, as nothing could be hurt and everybody could be helped, and as a matter of fact, as he pointed out, this case did not come up under your administration. It came up under the Republicans and he said that he would be glad to ask for this as he was a friend of Joe's and had recommended him when you appointed him. So, he phoned Joe Tidings and asked him for this short extension, but told me that he, the District Attorney, declined to give Edlin until about the 20th of January. I was talking to another great and good friend, Governor Millard Tawes, on another matter, and he is so keen about this great development there, and told him we needed a few extra days there until the title could be checked and the matter could be closed up, and Mr. Edlin would be out of this. He would have sold this interest. I think he is already out. He was just an agent, on regular commission, as I understand it, however, I do not know all the facts, but I do know this, it is a very small affair.

"I understand that one of the agents for one of the building and loan companies put in an ad that wasn't exactly right and an ad that Mr. Edlin had never seen in his life until he read it weeks after when it was brought to his attention. Governor Tawes said he would be glad to take this up with Joe Tidings, but called me and said that the District Attorney, the Honorable Joe Tidings, had declined. I am just wondering if he knows all of the facts in this matter and I'm wondering if he knows about

the cooperation that you are getting from Edlin in some other matters, and if he did, I feel sure that he would gladly give this small and short extension. The same banks and building and loan companies that are financing this wonderful and beautiful and nationally known Cassell colored development or city, there in Maryland, that I've told you so much about and that everybody is talking about, would also be in trouble if there was a run on these building and loan companies about this or anything else. I am told that the Cassell family, who owned this development, was financed by these building and loan associations and they have offered Cassell five hundred thousand dollars profit to buy him out on his development, but Cassell had declined. I am just pointing out that this, too, if anything happened to the building and loans, could be ruined which would be a tragedy as this Cassell development which Kenneth Edlin made possible could be wiped off the face of the earth. It just doesn't make sense to me and to the people in Maryland who are right there, and I hope that you will suggest to our District Attorney that he grant this January extension, and I guarantee you one thing, Bob, I'll never mention this matter to you or to Jack or anybody else again, but I don't see the sense in it, and this is a tremendous development and both Congressman Langsdale Sasser and Governor Millard Tawes know all about it and they too, agree with me that it would be the greatest development that we have ever had in that part of Maryland. I believe; however, I don't know, that the above gentleman told the District Attorney this and I don't see where anybody could be hurt by the January extension they are asking for, and I understand this matter is all about a very unimportant newspaper advertisement that I've already mentioned and that Edlin has never seen. I am sure that the District Attorney who has only been there for a short time, and didn't know about this case does not know all of the facts, and of the cooperation that Edlin has given everybody in many things and especially in one of the greatest developments that could ever happen in Maryland or

anywhere else and if you see this as we do, I wish you would suggest to the District Attorney in Baltimore that this be done. I wouldn't ask you to do this if it would jeopardize the case in any way, shape or form and neither would the Governor or Congressman Sasser. As soon as the attorneys check the titles to the property, the people who have bought it through Mr. Edlin, who is agent, could go right ahead with their case and not a one of us would ever say a word. If there is any other information you want on this, won't you please call me? I'll either be at my home here in Mobile, or at my office at the Admiral Semmes Hotel.

"What we are asking won't hurt the government. It won't hurt a person in the world, but in my judgment would help many, many people in that part of the country and many other places. I am so anxious to help on this or anything else in the development that will give us a lift, especially at this time. Everybody is feeling better and things are looking better and this would really and truly put that part of the great State of Maryland on the map, and would mean much to have the millions of dollars being spent there by our great friend, Governor Millard Tawes, and many of our other friends, especially all of the Congressmen who will be running for reelection while this great development is going on. Please call me if you need any other information, and with every good wish, now and always, I am, sincerely your friend. Advise.

"Sincerely,

"Frank W. Boykin,

"Member of Congress."

* * * * * *

[Tr. 2118-2134]

(The Court) Well, there are a couple of things that are open. We have this famous document 86 of which 86-A, the single letter, has been admitted, 86-B, the two paged—I don't know whether it is a summary or a two-paged statement—and no part of the very elaborate document, which is attached to it, has been read to the jury.

It is my understanding that if either side wanted any part of it read to the jury, they would look it over over the weekend and tell the Court whether either side or counsel for anybody wanted any parts beyond the first three pages, which I have mentioned, read to the jury.

(Mr. Williams) Speaking for the Defendant Boykin, Your Honor, it is our position that we did not object to the admission of the document. We have no disposition to have any of it read. If anybody wants any of it read or all of it read, it is perfectly agreeable to us, so we have no position.

(The Court) Does the Government wish to read any parts of it?

(Mr. Tydings) The Government wishes to read the first page of the synopsis, which I believe is marked "C", Your Honor. We do wish to offer the entire exhibit into evidence, not to read it, but merely for the jury to see the volume and see what it is.

(The Court) You can stand up and show them. It has been admitted in evidence, and you can show them what it is. You only want to read the first page of this, which is headed "Synopsis"?

(Mr. Tydings) That is right, the page which is headed "Synopsis."

(The Court) If the Government reads that, you still don't wish to read any more?

(Mr. Williams) No, I would like to have Mr. Tydings read all or any part of it, preferably all.

(The Court) If the Government only reads the first page "Synopsis," do you wish to read any more?

(Mr. Doub) Not at this time, Your Honor. It may be at a later time.

(The Court) I think whatever is to be done as part of the Government's case ought to be done, because it must be nearly over by now. Of course, you can read additional

parts, and if you read additional parts the Government will then have an opportunity to read further parts. I want to know what everybody wants to read at this time if the Government reads the first page.

(Mr. Genn) Well, evidently it doesn't pertain primarily to the other defendants, in any event. We would like pages 1 through 4-A read.

(The Court) All right.

(Mr. Genn) Particularly in the light of this witness' last testimony.

(The Court) All right.

Well, the Government wants a "Synopsis." Mr. Edlin wants pages 1 through 4-A.

Mr. Robinson?

(Mr. Genn) I had not concluded. Exhibit C of Mr. Rains, paragraph 1, the first page.

(The Court) Where does that occur, do you know?

(Mr. Tydings) Near the back of the synopsis.

(Mr. Genn) Exhibit C is the second to the last exhibit, I believe. It says: "The following exhibit is agreed is a brief prepared by Jackson Rains." This is an exhibit marked for identification by Mr. Tydings.

(The Court) I haven't gotten down to it yet.

(The Court) You say it is Exhibit C?

(Mr. Genn) Yes, Exhibit C.

(The Court) "The following exhibit is a brief prepared by Jackson D. Rains." Do you want that whole thing read?

(Mr. Genn) No, that won't be necessary, Your Honor.

(The Court) How much?

(Mr. Genn) Paragraph 1, beginning in the fourth sentence, "I was asked by Edlin" up to "accountants' hand-

book," and then on page 2 of the exhibit starting with "Mr. Samuel Cohen" up to "greater surplus" on the next page, page 3.

(The Court) Beginning on what page?

(Mr. Genn) Well—

(The Court) That is a very small part on page 1 then, isn't it?

(Mr. Genn) That is right. "For my authority I was using an accountants' handbook," and you can stop there.

Then on page 2, it starts "Mr. Samuel Cohen of Burk, Lansburgh and Gerber," the second to the last paragraph up to "greater surplus," on the next page.

(The Court) "Greater surplus," that is about line 3 on the next page.

(Mr. Genn) That is right.

And page 5, paragraph 3, which is about the midsection, something just above the midsect "Conclusion: How can it be said that this was fraudulent accounting," and so forth. "I did not believe then nor do I believe now that they had any other intention than an honest regard for the association and the savers."

Now, so that I may perhaps, I may have misunderstood—and if I am incorrect, I would like the Court to tell me—I had intended to make a motion for a mistrial with respect to this. I have previously made them, I realize. I do believe that the Court could hear some law with respect to the matter, and the summary of the reasons why I believe that we have reached now a mistrial, a cumulative point which was not reached previously, and as to why a severance or motion for a mistrial should be granted. If the Court prefers not to hear it—

(The Court) I will hear you right now.

(Mr. Genn) I might state this, first of all, Your Honor. I stated from the outset when we began this case that I

felt that a very vital principle was the principle that was stated in the Michaelson case. I don't have to repeat that at this time. The Court is familiar with it, and caused Mr. Tydings to proceed in a case along that line. That line was to make certain that the issues of character were not the primary issues to be decided in this case.

I also stated to the Court both off and on the record that we had some objection to the constant reference of indictment. I stated to you, also, that in candor I think the law was against the position I was urging, but I felt to preserve my client's rights I had to continue that objection. It has become perhaps persistent. I am sure that almost everybody who has heard it has thought it was just repetition without any substance, but there are times when one has to continue this.

Now, the question is what is the ultimate effect as of now? I reviewed the record over the weekend, Your Honor, and I would like to state what is the total sum of things as this case has developed right to this particular point of why should the motion be granted.

The opening statement of the Government referred to the fact that money of savers was used. That is absolutely irrelevant to this case. There will be no one item, I might say, in my view that I am now stating to you as facts in this case is necessarily one which in and of itself I am urging is sufficient, but it is the sum total, the aggregate. The aggregate was a factor in Tamiello, which was in 249 Fed. 2nd, the Tamiello case. The aggregate of error that hase been developed.

Now, what is it? Let's take each witness. Let's take, for example, the first witness, Jackson Rains. Now, with reference to his particular testimony, with reference to Jackson Rains' testimony, he testified to actions and activities that occurred during the savings and loan case. Then in the course of his testimony, as I recall, it was developed that there was an indictment, a nollo plea, it was brought out before the jury what the sentence was of Mr. Edlin.

(The Court) By the co-defendants and not by the Government.

(Mr. Genn) Now, if the Court is taking the position that merely because a co-defendant brings something out that that is not a ground by which this defendant may contend his rights to a fair trial, I would like to be certain that I understand the Court's position, because if that is the Court's position, I urge that it is strongly in error.

(The Court) It is a factor to be considered in a case of this sort, whether it is done by the Government or whether it is done in good faith by a co-defendant attempting to defend his case the way they think it should be defended; whereas you think it should be defended in a different way. That is as far as it seems to me, I can see that a co-defendant may under certain circumstances produce evidence which would make it unfair, but the fact that it is brought out by a co-defendant in a bona fide defense to the case is a factor to be considered, where the Government has been cautious.

(Mr. Genn) Your Honor, the good faith of these defendants has no weight whatsoever when balanced against the constitutional right to a fair trial. Now, I am not—

(The Court) Mr. Genn, just make your argument. I agree with that. I am not talking about good faith of the defendants, the point of fact that they are not trying to throw the hooks into you.

* * * * * *

(Mr. Genn) Another point about this is the fact that originally, it is like a kind of cancer when you get into it. I do not want to characterize it. But the fact remains that the first things might be somewhat harmless but every time that Your Honor instructs the jury, you are just operating on a cancer that is already malignant. They have heard the testimony. They heard the highest official of the United States Attorney General characterize in effect this defendant a liar. And he had a strong case. The end result was when he suggested—

(The Court) Even after he told your alleged co-conspirators that he had a strong case, your alleged co-conspirators for reasons which the jury could find I believe, to have been pecuniary, nevertheless, except on trying to press against the efforts to have the case against your client either dismissed or postponed which was, according to the allegations of the government, and unless you can persuade me to the contrary, of which there is some evidence that your client engaged in a conspiracy to have them do, I do not make any finding of fact. But I say that there is some evidence of a conspiracy up to this time.

(Mr. Genn) That does not bear in the slightest on the right to bring out in testimony the fact that it was the opinion of the Attorney General of the United States that there was a strong case and it also was his opinion that not satisfactory evidence was being given by this defendant and he was not being wholly truthful.

Now, that damage was done. It could never be eradicated from that jury. The day before that it was brought out through Mr. Goldman that there are pending indictments in Montgomery County against this defendant. Pray tell how can he eradicate that from the mind of that jury? You operate on it. You increase it when you mention it. And the fact remains that that is not in furtherance of the conspiracy nor is the statement that the Attorney General made in furtherance of the conspiracy. You can not justify it on that ground.

(The Court) Of course, the statement was not made in furtherance of the conspiracy. But what your alleged co-conspirators did after the Attorney General made the statement to him is evidence of acts in furtherance of the conspiracy.

* * * * * *

(Mr. Genn) I know I am not going to be terribly persuasive to convince you of this. Then we ended up finally with Mr. Meyer and the testimony today about incidents that go back a long period of time. Now, there is a point in

time when one can say "Yes, maybe such discussions were raised" but they are so damaging and prejudicial and so unfairly underscored that no jury can fairly make a determination of guilt or innocence on one basic issue: Was there an agreement and was there payment for it and that is all.

But what we have got is everything we talked about the 190-day—the 1941 conviction the Securities and Exchange Commission Violation. We talked about everything in creation except what was specifically involved. I am not going to convince Your Honor I am sure, but I think the record should indicate I have made the attempt.

(The Court) Does anyone else want to say anything?

Motion is denied. I think you are asking me to have the play of Hamlet without any reference to murder.

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[Tr. 2140-2211]

CROSS EXAMINATION

By Mr. Johnson:

Q. Mr. Miller, did you testify before the grand jury in this case? A. I did not.

Q. Did you prepare a memorandum for the District Attorney in respect to a report in this case? A. I prepared a memorandum in which I tried to set forth to the best of my ability what happened.

Q. Now, yesterday on the stand you testified as to what we term a "consolidated list" of telephone calls, meetings at your office at the Justice Department. Do you recall that testimony? A. Yes, this exhibit.

Q. And that is referred to, I believe, as Government exhibit No. 144. A. Yes.

Q. Now, first, Mr. Miller, may I ask that you refer to that list and month by month testify as to the exact number

of visits by the defendant Johnson to your office. May I first refer to the month of April, 1961. How many meetings were there at your office during the month of April, 1961 by Defendant Johnson and Defendant Boykin? A. Well, in April, you were in on April 17, Congressman Johnson. That was the only meeting.

Q. So that the entire month of April, 1961, there was only one conference with you in your office with Defendant Johnson and Defendant Boykin, is that correct? A. Yes, Congressman. That was in my office. I believe that I sat in on part of the conference with you and Congressman Boykin earlier in April in the Attorney General's office.

Q. But I am referring specifically to in your office. A. Yes.

Q. As shown in government exhibit 144? A. That is right.

Q. Now, I direct your attention the month of May, 1961. Will you state how many conferences the defendants Johnson and Boykin had in your office with you during that month? A. May 3 Congressman Johnson and Congressman Boykin were in to see me.

May 22, Congressman Johnson and Congressman Boykin were in to see me. Those are the visits.

Q. So that during the entire month of May there were only two visits by Congressman Johnson and Congressman Boykin to your office during May? A. Yes.

Q. Now, I direct your attention to government exhibit 144 and ask you as to the month of June, how many conferences did Defendants Johnson and Boykin have at your office? A. June 12 Congressman Boykin and Congressman Johnson were in to see me.

June 15 Congressman Boykin and Johnson were in to see me.

June 27 Congressman Boykin and Johnson were in to see me.

And those are the visits in the month of June.

Q. So, for the entire month of June there were three visits? A. That is right.

Q. And you testified that the visit on June 15 was the occasion when Mr. Meyer was brought to your office? A. Yes, Congressman, that is my best recollection.

Q. Is it not true, Mr. Miller, that there was no conference on that date, merely that Mr. Meyer was brought to your office? A. Yes. The best of my recollection is you just brought him in and I said that I did not have time to talk with him and sent him down to see a lawyer. So, I am sure that that was a very short visit.

Q. So, actually, there were only two conferences during the month of June by defendants Johnson and Boykin? A. Yes.

Q. Now, we are going to the month of July, 1961, and will you tell the jury how many conferences or meetings there were with you with defendants Johnson and Boykin during the entire month of July? A. I do not see any. There were no meetings.

Q. There was nothing in July A. No meetings.

Q. Now, we go to the month of August, 1961. Will you state how many conferences there were at your office with Defendant Johnson and Defendant Boykin during the entire month of August? A. Yes, Congressman Johnson, you were in on August 7. You were in on August 24. That is a total of two meetings.

Q. Two meetings in the entire month of August? A. Yes.

Q. Now, I refer you to September of 1961 and ask you whether you would tell the jury how many visits there were during the entire month of September. A. September 14 Congressmen Johnson and Boykin were in to see me.

September 21 Congressmen Boykin and Johnson were

in to see me. Those were the visits for the month of September.

Q. So that, during the entire month of September, 1961 there were only two visits by defendants Johnson and Boykin to your office? A. That is correct.

Q. Now, getting into October of 1961, how many visits were there to your office by the defendants Johnson and Boykin? A. There was a visit on October 16 by Congressmen Johnson and Boykin. I believe that is the only visit. Yes, that was the only visit in October.

Q. So that during the entire month of October, there was only one visit by Defendants Johnson and Boykin to your office? A. That is correct.

Q. And yet your exhibit shows, does it not, a long list of telephone calls was kept to make appointments for other reasons that the telephone was used? A. Yes, this list is a list of everything which was in my secretary's book.

Q. Now, in November of 1961 then, were there any conferences with you by defendants Johnson and Boykin? A. By this, you mean personal?

Q. Personally at your office? A. The month of November, no.

Q. Were there any in December of 1961? A. No, there were no conferences in December.

Q. Now, Mr. Miller, you referred to the meeting of April 12, 1961. That was a meeting, was it not, sir, with the Attorney General? A. Yes, it was. I cannot really place that date. I know that I was not at the first meeting that you had with the Attorney General, but I recall going up and I think the meeting was just about over because I know that the three of you were sittting around his desk, the Attorney General, you and Congressman Boykin, and I came in apparently right at the tail end of that meeting.

Q. And do you recall what, if anything, the Attorney

General told you at the time of that meeting in respect to Congressman Boykin or Congressman Johnson or both, talking with you about this case? A. I do not recall but I am sure that he probably said, would you please review the case and either let him or let you two know what the result is? I have no independent recollection of that but I am sure that is the way it would have been.

(The Court) Can the jury hear the witness? I think you had better bring the microphone closer to you. You drop your voice and the jury might not hear you.

By Mr. Johnson:

Q. But it is a fact, is it not, Mr. Miller, that at this April 12th meeting that you referred to, the Attorney General specifically asked you to review the Edlin case? A. Congressman, I cannot recall that but I will accept the fact that he did because I am sure that he did but I can not specifically call that to mind that he told me to do it.

Q. And can you state whether, in your presence, and in the presence of the Defendants Johnson and Boykin, both, that the Attorney General requested the defendants Johnson and Boykin to get in touch with you? A. I do not recall that but again, it would not surprise me if he so stated.

Q. Now, the first meeting at your office was on April 14, was it not, sir? A. Yes.

Q. Can you tell the jury exactly what transpired at that first meeting? A. Congressman, as I testified yesterday, I really cannot testify as to what happened specifically at any one of these meetings. This was in the course of a busy day and I can recall the substance of what was said. I can recall bits and drabs but I find great difficulty in placing a particular statement at a particular meeting and I have tried to refresh my recollection, for example, one reason why the meeting of May 3rd—I have a better recollection of it, is because a letter was written the day afterwards which pinpoints the date of that meeting.

Q. All right.

(Mr. Williams) Your Honor, I think, for the purpose of the record, it should be clarified. I think Mr. Johnson misspoke himself, if I heard him correctly. He asked about a meeting of April 14 where the record shows the meeting was on April 17.

(Mr. Johnson) 17, I think you are correct.

(The Witness) That is correct. I mis-read it. April 14 you called for an appointment. April 17 the meeting was held.

By Mr. Johnson:

Q. Referring again to April 17 the meeting of that date to refresh your recollection, do you recall when Defendants Johnson and Boykin came to your office, whether they had any drawings or plans with them? A. Congressman, it is my recollection that this first meeting was with you alone and my records so indicate. On the drawing and plans, I do not recall that I ever saw those. I believe that I have seen brochures of the Cassell Development but I do not believe I ever saw drawings and plans.

Q. Well, to refresh your recollection, the drawings that were designated as Boykin City, does that refresh your recollection? A. I remember the term "Boykin City" being used in discussion of the development but I really do not recall. Were they big, long?

Q. Very large—were they not, sir, the large drawings, three in number? A. I do not recall that, Congressman. I really do not.

Q. You do recall, Mr. Miller, do you not, that there was a great deal of discussion as to a development in Southern Maryland? A. I do, indeed.

Q. And that some 8,000 acres were involved in this development? A. Yes, I know now that 8,000 acres. I assume I probably knew it then. In fact, I think the 8,000

acres is referred to in Congressman Boykin's letter to me of May 4.

Q. And that what it meant to Southern Maryland, this development, from the standpoint of employment? A. Yes.

Q. Benefits to the economy? A. Yes, I specifically recall that.

Q. In fact, it is true, is it not, that on the first meeting a great deal of discussion was had in respect to the Southern Maryland property? A. I am sure that there was a good deal of discussion about the housing developments.

Q. And at this first meeting, Mr. Miller, do you recall whether or not Defendant Johnson made the statement that neither defendant Boykin nor defendant Johnson wanted to interfere in any way with the Department of Justice in respect to the pending cases? A. Oh, Congressman, I remember that very clearly.

You said it. I cannot pinpoint at which meeting but I know that you stated that to me and Congressman Boykin did on more than one occasion. There is no question about that.

Q. That we did not asked any favors and that neither Congressman Johnson nor Congressman Boykin wanted to interfere with justice in the disposition of the Edlin and First Colony cases? A. You so stated on several occasions.

Q. Now, as to the April 17th meeting, Mr. Miller, would it refresh your recollection that at that meeting you stated that you had not had a chance to read the memorandum, that you had been busy with other matters and that the conference would have to be deferred to a later date? A. I do not recall that but the way the work was running at that time, I could not deny that I said I had not had a chance to review the memorandum as yet.

Q. Now, that, I believe, you stated was the only and the one meeting in April which is on April 17 in your office? A. Yes, that is correct.

Q. Now, coming next to May 3 of 1961, you do recall that meeting in which defendants Johnson and Boykin were both present? A. Yes.

Q. And is it not true that much of the discussion dealt at that meeting in respect to what you described yesterday as the Dranow matter? A. Congressman, that is not my recollection. I will tell you why I do not think so. Because it is my recollection that it was at the end of that meeting when Congressman Boykin first mentioned that Edlin could be of help in the Dranow matter and he mentioned the memorandum and he said that he had supplied it to the Attorney General some time before and I did not know at that time of the existence of that memorandum and he, in fact, agreed to send it to me and did, in fact, send it to me by letter of May 4.

Q. And that is a government exhibit, I believe, 154, the letter you have referred to from Congressman Boykin? A. I do not know what number it is.

Q. But in the letter, does not Mr. Boykin refer to the discussion the day before on the Dranow matter? A. Oh, yes. But you asked me if it took up a substantial part of the conference, and I am quite positive it did not because it was right towards the end he brought up this memorandum.

Is it not true, Mr. Miller, that the first notice or information that the Justice Department had in respect to the Dranow matter was from Mr. Boykin and that was prior to the first visit with the Attorney General in March of 1961? A. I missed that question, sir.

Q. I say that, is it not true that this Dranow matter was brought to the attention of the Justice Department prior to the first visit with the Attorney General in March of 1961 when the Attorney General was asked to review

the Edlin case? A. Well, of course, I do not have personal knowledge of when the Attorney General was informed but I believe it was in early March. I think your first meeting with the Attorney General was March 25, 1961 and I think this matter was referred to him earlier than that and I think a copy of the memorandum was furnished the Department of Justice, maybe the middle of March. I had not seen it, however.

But to the best of your recollection, this matter dealing with Dranow, which also later developed as dealing with Mr. Hoffa, was brought to the attention of the Justice Department before any request for review of the Edlin case? A. Yes, I do not have personal knowledge that it was but I know, from department records, that it was.

Q. Yes. Now, on the May 3rd meeting of 1961, you desired, did you not, sir, a rather detailed report as to the Dranow matter? A. I do not recall asking for a detailed report, Congressman.

Q. Do you recall a discussion with defendant Johnson as to what knowledge he had of the case, the Dranow case? A. No, I do not recall that. My recollection is I discussed it with Congressman Boykin and it was he who brought forth the existence of this Dranow memorandum.

Q. And Congressman Boykin, did he not say, sir, that the Attorney General had requested him to get in touch with you with respect to the Dranow case? A. Oh, I cannot recall. I would not be surprised if he had. But it seems to me—

(Mr. Tydings) I am having trouble hearing you. You keep dropping your voice when you answer a question.

By Mr. Johnson:

Q. Now, on the May 3rd meeting, did you mention to Defendant Johnson and Defendant Boykin that investigations were going on in several areas in respect to Mr. Hoffa? A. Well, I do not recall whether I did or did not but if I did not, I could have, because there were.

Q. If I refresh your recollection, do you recall stating that there was a grand jury meeting in Miami, there was another one in New Orleans and I believe a third place in respect to investigation of Mr. Hoffa? A. I do not recall saying it at this specific meeting. I could have said it at one of these meetings because we were looking into the $100,000 treasury certificate at that time.

Q. And then at the May 3rd meeting, Mr. Miller, do you recall that there was some concern on your part as to whether Mr. Edlin had received part or all of the $80,000 or the $100,000? A. Yes, sir.

I am quite sure that was discussed at the May 3rd meeting, because of the fact that it is mentioned in Congressman Boykin's letter the next day.

Q. And did you recall that you were interested in knowing whether Mr. Edlin had received any part of the proceeds? A. I am sure I probably was but I do not specifically recall that I asked the question.

(Mr. Johnson) Would you mark this defendant exhibit for identification?

(The Clerk) Has the other side seen it, Mr. Johnson?

(Defendant Johnson exhibit 9 marked for identification.)

(The Clerk) Defendant Johnson exhibit 10 marked for identification.

(Defendant Johnson exhibit 10 marked for identification.)

By Mr. Johnson:

Q. Mr. Miller, I hand you this which is marked for identification and ask you if that refreshes your mind in respect to the request for the information as to Mr. Edlin in respect ot the $100,000 note? A. No, I recall this letter and I think that I wrote you a letter in reply at a subsequent time. I know that the— I assume what the informa-

tion was that you were talking about has something to do with Edlin but I, frankly, have no specific recollection because I remember I wrote back I think to Congressman Boykin a few days later and said I understood Congressman Johnson was going to be in touch with me about a matter discussed at the office. I assume that was about the Edlin matter.

Q. I hand you this, sir, and ask you if that is the letter which you referred to which is your reply? A. Yes, that is the one I wrote. May 15.

Q. Now, it states in your reply, does it not, that you—

(Mr. Williams) May we have those letters identified from whom to whom and date for the record, Your Honor? We do not know, sitting over here, what they are.

(Mr. Johnson) Defendant Johnson exhibit for identification No. 9, a letter to the Honorable Herbert J. Miller from Thomas F. Johnson, dated May 9, 1961.

Defendant Johnson's exhibit 10 marked for identification — a letter to the Honorable Thomas F. Johnson from Herbert J. Miller, Assistant Attorney General, dated May 15, 1961.

(The Court) Well, would it not be well to have them read to the jury now so they will have some idea what the questions are rather than to have them read later entirely disassociated with what the witness said about them?

(Mr. Johnson) I would be happy to.

(The Court) Can it be done with the understanding that it does not waive any of the defendant's motions at the end of the Government's case? I think we ought to have some continuity between the exhibits and comments. Is that agreeable, Mr. Tydings:

(Mr. Tydings) We have no objection.

(The Court) Let that be marked in evidence then and

read to the jury so the jury can tell what the witness is talking about.

(Mr. Tydings) Would you like to have the originals, Mr. Johnson? Those are copies. The original is the same.

(Mr. Johnson) I would be happy to put the original in.

(Mr. Tydings) We have them if you want them, otherwise you can just read the copies. It is the same wording in both so it does not make too much difference.

(The Clerk) Defendant Johnson exhibits 9 and 10 marked in evidence.

(Defendant Johnson exhibits 9 and 10 received in evidence.)

(Mr. Johnson) If the Jury please, exhibit No. 9 referred to, offered in evidence, is a letter dated May 9, 1961, to the Honorable Herbert J. Miller, Jr., Assistant Attorney General, Criminal Division, Department of Justice, Washington 25, D.C.

"Dear Jack:

"Prior to leaving on Friday past, I tried to reach you by telephone but with no success. I have been able to secure the information on the matter discussed in your office which should prove of considerable importance.

"With kindest regards, I am,

"Sincerely yours,

Thomas F. Johnson."

Then there is a letter dated May 15, 1961.

To the Honorable Thomas F. Johnson, House of Representatives, Washington 25, D.C.

"Dear Congressman:

"In reply to your letter of May 9, I tried to reach you last Saturday but apparently your office was closed and for which I must apologize. I forgot to call earlier in the

week. I would, of course, be happy to discuss the matter in question with you at your convenience.

"Sincerely,

"Herbert J. Miller, Jr."

By Mr. Johnson:

Now, Mr. Miller, I noticed—according to the May 15 letter, that you did try to reach me by telephone, is that correct? A. Yes, that is correct.

Q. Now, does that reflect on your statement of telephone calls as to that call trying to reach me? A. Yes, that is, I am pretty sure this would be the call, May 6 at 10:20, "Called Congressman Johnson, returned call at 5:05."

You had called me on May 5 and this was my return call on May 6 and there is a notation "No answer," so I assume that I did not talk to you.

Q. Now, Mr. Miller, do you recall that as of the May 3rd, 1961 meeting, whether any arrangements or suggestions were made as to Mr. Edlin and Mr. Robinson to appear before a Federal Grand Jury in Florida? A. I doubt it, Congressman. I think that there were discussions at a subsequent time. In fact, you and Congressman Boykin came to see me later on. I assume it was the 22nd and I believe that was the date that Edlin and Robinson were interviewed by attorneys in the Criminal Division.

Q. You do not recall as to the May 3rd meeting? A. I assume that the May 22nd date is when there was discussion of Edlin and Robinson giving a statement to the Department.

Q. Now, as of the May 3rd meeting, was there anything improper or illegal in your opinion as to that meeting with Defendants Johnson and Boykin at your office? A. Congressman, in so far as my knowledge of the facts, as they existed at that time, the answer is there certainly was nothing illegal and I would say there was probably nothing improper.

Q. Now, we next go to the meeting on May 22, 1961. You stated that you do have some recollection of what took place at that meeting? A. I think the only way I could have any recollection of what specifically took place at this meeting is that this is the date Edlin and Robinson were interviewed by lawyers in my division and so I must assume that there was some discussion of that on May 22.

But, running all throughout these meetings, Congressman, we were not just talking about Edlin and we were talking about the various points of the case and the impact on Maryland. It is very difficult to separate out individual things. We were discussing the whole problem and I am pretty sure that probably at each of these meetings, because we kept going over and over it.

Q. What was the final date—if you know—that Defendant Edlin and Defendant Robinson finally did appear before a grand jury in Florida? A. I believe that was in, I think it was in September of 1961. September 21, around about that time.

Q. Then is it a correct statement that from the very first meeting in May through to September, the last of September, the Dranow case was discussed periodically? A. I missed the period.

Q. From May, the first meeting in May, on May 3 to the last of September, 1961, is it not true that the Dranow case which allegedly involved Mr. Hoffa, was discussed from time to time? A. Oh, yes, I am sure we discussed it from time to time during that period.

Q. Now, at any time did you request defendant Johnson or defendant Boykin or both to intercede with Mr. Edlin and Mr. Robinson to have them go before a grand jury in Florida? A. I do not recall that. It is my recollection you offered, first of all, to bring him in to be interviewed and then you, in effect, offered his services before a grand jury if we wanted him.

Q. May I ask, Mr. Miller, who advised that there was a

grand jury meeting in Florida during that period of time? A. Who advised whom?

Q. Defendant Johnson and defendant Boykin. A. Well, I do not specifically know that anyone did advise you of that fact but if you were so advised, I assume that either I advised you or that Edlin or Robinson advised you after they had talked to the attorneys who were working on this case from my division.

Q. Do you recall during the meetings in May that you asked the defendant Johnson and defendant Boykin to determine whether Mr. Edlin would appear before the Grand Jury in Miami? A. I do not specifically recall it but I may very well have.

Q. Do you recall that, if they would appear, to advise you so that arrangements could be made that they would be interviewed, that is, Mr. Edlin and Mr. Robinson, the date set for their appearance? A. Well, they were interviewed on May 22 by my attorneys and I assume that this matter was discussed at the meeting of May 22. You probably at that stage said that they would be willing to be interviewed and I notice that at 2:45 on that afternoon, I called you and talked at 2:50. I assume I was calling you to say that, if they wanted to be interviewed, they could set up an appointment with attorneys in my division. In fact, that happened that afternoon.

Q. So that there was an interview set up with Mr. Edlin? A. Yes, sir.

Q. And Mr. Robinson? A. Yes.

Q. Now, on the May 22nd meeting, do you recall Defendant Johnson stating to you that it would be made clear, it should be made clear to Mr. Edlin that his appearance before the grand jury in Miami should not be taken in any way as any deal or any favor that could be considered in his case. A. No, I do not recall that. I assume I probably made it clear that his appearance would have

to be voluntarily made. Because he was then under a pending indictment. I do not recall any statement, however.

Q. You recall no discussion as to when Mr. Edlin would be approached as to what would be said to him in respect to his— A. Congressman, I do not.

Q. But you would not say that that conversation did not take place? A. I am not sure that I would not, as a matter of fact, because my guess—no, I hate to guess on the stand. I am sure that what happened it that you offered his services to appear to be interviewed and then I said, "Well, if he comes in, it has got to be voluntary," because he was then currently under an indictment.

Q. And at that time did you not hear defendant Johnson say that it would be made clear to Mr. Edlin that what he was doing would not affect in any way his pending case? A. I do not recall that but if you said it, Congressman, I want to be as fair as I can in this—I will accept the fact that you said it. I just do not remember.

Q. Is it not true that defendant Johnson was somewhat concerned as to Mr. Edlin's appearance because he, at the time was under a federal indictment? A. I do not recall that but my recollection is, frankly, that you and Congressman Boykin were both anxious. One, that he be interviewed and two, that he appear before the grand jury.

Q. And at the same time, was not the government anxious to have his information and his appearance before the Grand Jury? A. I would not say the Government was anxious but we were willing to accept the information to see whether or not it would prove of value.

Q. Now, would you tell the jury, Mr. Miller, whether or not to your knowledge, Mr. Edlin was requested to go before the grand jury and you were so notified by Defendant Johnson and Defendant Boykin? A. Well, I know it happened. I do not know that I had personal knowledge that he would. I know he eventually appeared.

Q. Do you know when that appearance occurred? A. September, was it the 21st, 1961?

Q. Mr. Miller, how many times did they appear before the grand jury or in Miami in respect to the Hoffa investigation?

(Mr. Tydings) Did who appear?

(Mr. Johnson) Mr. Edlin and Mr. Robinson.

(The Witness) Let us see. My recollection is that they went down once and they did not appear. They were scheduled to appear at a later date and I think Mr. Robinson had a death, an uncle died, or something, that he could not appear and then they eventually appeared.

I think it was September. The records will show when it was. September, about the 21st.

Q. But prior to September 21, 1961, Mr. Robinson and Mr. Edlin did make a trip to Miami, Florida for the purpose of testifying in an investigation dealing with Mr. Hoffa, is that not true? A. Well, when you say "an investigation dealing with Mr. Hoffa," I am not sure that that was the—that that would be completely accurate. Wait a minute. It would, too, because I remember he came forth with some additional information which had not been contained in the first memorandum. Yes, he went down, I was not there, so I really do not know, but I am sure that I was told that he went down to testify and this would be June.

I really do not know when it was, and the Grand Jury was dismissed and he did not testify.

Q. Actually, through some so-called "mix-up," they did not testify on the first occasion, is that correct? A. That is what I am informed, yes.

Q. Now, following that, do you recall communicating with Defendants Johnson and Boykin asking whether they would intercede with Mr. Edlin to have him return again

to Florida to testify? A. No, I may very well have done it, but I certainly do not remember it.

Q. Do you recall having been told by defendant Johnson and defendant Boykin that they had been in touch with Mr. Edlin and he had refused to return to Florida to testify before the grand jury? A. No, the one thing I do remember is Congressman Boykin called me and asked me to get an extension of his appearance in Miami because of a death in Mr. Robinson's family, and I said, "Well, don't worry about it; we will take care of that." But that was at a subsequent time.

Q. You say you have no recollection of being advised that Mr. Edlin refused to return to Florida to testify at a subsequent meeting of the grand jury? A. I have no recollection of that, Congressman. In fact, I sincerely doubt that I was ever so informed.

Q. Well, if I refresh your recollection, didn't Defendants Johnson and Boykin come to your office to tell you that there had been threats made against Mr. Edlin and against his wife, that Mr. Edlin refused to go back to Florida, that you wanted to know where the threats emanated from, who made them; if they would return back, you would see that they would be given protection, do you remember that? A. I remember Mr. Robinson coming in to my office and telling me that they had received word from a fellow by the name of McDaniels, they had received a telephone call that McDaniels had better take care of whatever business he had with Edlin, because Edlin was going to be killed and also I think Mr. Robinson at that time told me that Mr. Edlin had been threatened by—I forget now, someone over in Batimore. I forget the exact circumstances.

This was brought to my attention by Mr. Robinson. I suppose that would have been probably in September, and I'm quite sure that I then prepared a memorandum to J. Edgar Hoover, bringing the matter to his attention.

Now, additionally, there was some other matter Mr. Robinson mentioned to me, I cannot recall.

Q. But, Mr. Miller, you do recall that there were these alleged threats against Mr. Edlin and against Mrs. Edlin? A. Yes.

Q. That was brought to your attention? Yes.

Q. And you say you do not or do recall telling Defendant Johnson and Defendant Boykin that, if Mr. Edlin would return to Florida, you would see that there was proper protection given him and also to Mrs. Edlin and to so advise them? A. Congressman, the reason I have great difficulty in believing that is true is because I do not recall ever arranging some protection for Edlin. Now, if the records would show that I had called the Marshal or someone to give him protection, well, then, I would, of course, agree with you. It is my recollection that Mr. Robinson told me about that.

Q. And, particularly, as to Mrs. Edlin receiving these anonymous calls at her home in Miami. Do you recall that being brought to your attention by defendant Johnson and Boykin? A. Was this the incident when a dog barked?

Q. Yes. A. Now I remember. The dog barked at Mr. Edlin's home. I remember that now. I had forgotten about that. Now, that, you probably told me about that. I was thinking of the other incident with Mr. Robinson.

Q. Did you not state that if that were true you would investigate and that you would see that proper protection was given? A. I doubt seriously I would have said that proper protection would be given.

Q. Or you would endeavor to get protection or you would make the request for protection? A. I probably said that I would look into it, period.

Q. And, as you stated that in September, Mr. Edlin and Mr. Robinson did appear before the grand jury? A. I am so informed.

Q. Yes. And is it not true that in appreciation of their appearance, that the Attorney General did get in touch with Mr. Boykin, in fact, wrote him and thanked him for making possible their appearance; have you knowledge of that letter? A. No, I do not believe I have seen that letter.

Q. Now, the next meeting that we referred to is on June 12, 1961, is that correct? A. Yes.

Q. Do you recall what took place at that meeting? A. The best of my recollection, this was a meeting—of course, it is so difficult to try to pinpoint what happened at each of these meetings, but I am sure we were discussing the issues of the case and whether or not the indictment was well founded.

Congressman, you will recall that you told me on several occasions and probably including this meeting, that you felt that the indictment against Edlin was a result of the controversy between the independent savings and loan associations and the Federally chartered savings and loan associations and that this was—I do not know whether you used the term "vendetta" or not, but a "vendetta" by the Post Office employees who investigated the case, or somebody in the Federally-chartered savings and loan field who were out to "get" Edlin because he was running an independent savings and loan.

Now, I am quite positive that you may very well have mentioned that at every one of these meetings, because I can remember this was—you discussed this at great length.

Q. Yes. And that was during the time that you were reviewing the case? A. Yes, at this time. Sometime in here I looked at the case. I probably looked at it rather superficially because I really did not get down to examine the case carefully until August but I had gone over it. I had a memorandum. The Attorney General asked me to prepare a memorandum in the beginning of April on the facts of this case, and this was in effect a reply, or discussion or analysis of the large brief that you filed with the At-

torney General which went into all the facets of the indictment and facts. I had been requested to and did send the Attorney General a memorandum which analyzed and considered the various facts. I had a working knowledge of the case at that time but it takes a long time, as you know, to delve down into the facts of the case and I really did not do that until August.

Q. Mr. Miller, do you recall that on this June 12 meeting, that you were asked as to the merits of this Edlin case, and whether, in your opinion, it was a case that should be disposed of or should not be disposed of by fine? A. Sometime in the progress of our various conversations, and it could well have been right in this area, the discussion came up as to whether or not the case could be disposed of by dropping the charges against the individual defendants and letting the corporation plead guilty, and have a fine imposed and, of course, the trouble with that is that then the shareholders would have to—or the small depositors who put their money in the savings and loan would, in effect, have to pay the fine out of income that normally would have come back to them by way of interest.

Q. But, did you not reply when asked whether this was a case for disposition by fiine at the June 12th meeting, that that would not be possible to be considered because Mr. Edlin's record showed not one but two and possibly three previous convictions and also, difficult with the Corona Savings and Loan in Chicago? A. Yes. Now, I can pinpoint that discussion, which is not quite the way you put it, because my records show that Meyer, this probation man, was interviewed on June 15.

Q. Yes. A. I remember that we discussed this matter immediately prior to that. So that was June 12. I can recall, Congressman, I had the Post Office Inspectors' file in front of me because I had been going over the case, and I had found in there this statement to which I testified yesterday, the fact that he had been convicted twice and had been involved in a savings and loan association at Corona, in

Chicago which had been placed into receivership and that was no criminal aspect to the Chicago thing as I recall.

Q. That was the June 12th meeting? A. As best I can reconstruct it, we talked about his prior record on the June 12th meeting.

Q. I would like to refresh your recollection. You were sitting at your desk, were you not, sir, and you opened the file and made the statement there that there were two and possibly three convictions? A. I doubt that I said "possibly three convictions." Because, as I recall that file, there is no indication of anything criminal on the affair out in Chicago. In fact, I think I actually showed you the file and let you read it.

Q. You stated yesterday on direct examination that both Defendant Johnson and Defendant Boykin were quite surprised A. It is my recollection that you were surprised by the fact that he had had this prior difficulty.

Q. Were you not advised, Mr. Miller, that defendant Johnson and defendant Boykin had been told time and again there had been only the one conviction and that was many years before? A. Yes, you all did tell me that.

Q. Did you not say, sir, that, if that file were incorrect, you did not wish to have incorrect information and that, if it were found to be false, you would like to know? A. Oh, I am sure of it. Any time any record in the Department is false, we want to correct it.

Q. And, as a result of the June 12th meeting, the other meeting referred to on the 15th with Mr. Meyer, was an outgrowth, was it not, sir of the June 12th meeting? A. I do not know whether it was an outgrowth or not. I remember being surprised when Mr. Meyer walked in the office. I had no idea who he was or what he was there for. You all brought him in and introduced him.

Q. And, Mr. Miller, Mr. Meyer has been identified as the probation officer with the Department of Justice, was he

not, sir? A. He was introduced to me as the probation officer. I think he actually worked for the Court.

(The Court) Probation officers are officers under the Administrative Office of the Court and not under the Department of Justice. They are Court officers and not Department of Justice Officers.

By Mr. Johnson:

Q. Well, you were advised that Congressman Johnson and Congressman Boykin desired to come over to see you on the 15th of June, 1961, were you not? A. I was advised by my secretary. I note that there is an itemization on Government exhibit 144, June 14, there is a note in my secretary's book "Congressman Johnson wants a 10:15 appointment tomorrow before 10:30 or between 12:30 or 2:30. Extension 5464. Set for 10 a.m."

I assume my secretary said you called for an appointment and I said "Set it for 10 o'clock."

Q. On the morning of the 15th, Mr. Meyer was brought to your office, is that correct? A. That is right.

Q. At that time it is stated that you had another appointment and could not remain? A. Well, I either said that or I was too darned busy to sit down and take a lengthy statement from him. All I know is that I did not want to sti down and spend my time interviewing him.

Q. And is it not true that at that same time Congressman Boykin and Defendant Johnson stated that they had committee meetings and could not remain? A. I do not recall that. I have no idea.

Q. Well, it is true, is it not, sir? A. It is my recollection that he was taken immediately over to talk to one of the attorneys.

Q. Well, at whose request was he taken over to one of the attorneys? A. I assume I called up one of the lawyers and said "Here is a man that I would like to get a statement

from'' so it would be at my request that the statement was taken, sure.

Q. Would that be Mr. Cassidy? A. Yes.

Q. And did Mr. Cassidy call you, or Mr. Meyer, after they were in Mr. Cassidy's office? A. I do not recall that. They could have. I know I sent him down to Mr. Cassidy.

Q. Well, is it not true, Mr. Miller, that you requested that Mr. Meyer give a full and complete report? A. Oh, sure.

Q. On Mr. Edlin? A. Sure. I mean, I assume I did. I do not remember specifically requesting it, but I am sure that I asked Mr. Meyer to give a statement to Cassidy.

Q. That report, whether it was good or bad, was to be given to Mr. Cassidy as to Mr. Edlin? A. Well, I did not know about Mr. Edlin. I know it was given to Cassidy because we wanted it for our file.

Q. Now, did Defendant Boykin or Defendant Johnson have any knowledge as to what that report would contain prior to the visit to the Justice Department, if you know? A. I am just trying to recall whether or not you told me before you brought Meyer in that same morning when I think you all came in first and brought him in and introduced him.

I do not recall whether you told me that or whether Congressman Boykin told me that Meyer was going to give a great report and prove that there had been no conviction or not. I cannot recall whether you told me that or not.

Q. As a matter of fact, Mr. Miller, is it not true that on the following day, June 16, 1961, you received a communication from me, that is, from Defendant Johnson, asking what the report contained? A. I think you wrote me a letter saying that you would like a report on the matter discussed, or something like that.

Q. Do you have that letter with you? A. I do not.

Q. Do you have the letter there?

(Mr. Tydings) We do not have that.

By Mr. Johnson:

Q. You do recall receiving a letter from defendant Johnson asking for a report? A. My best recollection is you wrote a letter that said that you would—I think it run something like, you would like a report after the review of the matter submitted from the gentleman in Chicago. Something along that line.

Q. Did you give a report then on the findings of Mr. Miller to defendant Johnson or defendant Boykin? A. I do not recall that I did.

Q. But what was your next meeting following that of June 15, 1961? A. June 22. No, wait a minute. June 27, I am sorry.

Q. June 27? A. Yes.

Q. Can you tell the jury whether at that meeting you gave a report as to Mr. Meyer? A. I do not recall whether I did or not, Congressman. I do not recall giving you a copy of the report.

Q. Do you recall what took place at that meeting? A. No, I assume that this meeting, like the other meetings, was more discussion about the case and it involved a lot of discussion about the housing development, but specifically, anything to pinpoint what happened at this meeting, I do not recall.

Q. Now, up to that time there had been nothing improper, nothing irregular as to any meetings with the Department of Justice on behalf of Defendant Johnson or Defendant Boykin that you recall? A. Well, Congressman, that is a difficult question because you are assuming that I knew then the facts about the background.

(Mr. Doub) Just a minue.

(Mr. Tydings) Let him answer. You have asked that question twice, and you are entitled—he is entitled to answer.

(The Court) He may answer the question.

(Mr. Tydings) And answer it fully.

(Mr. Doub) May I ask, Your Honor, this question then. May he state facts which only the jury may determine?

(The Court) He may state an answer to the question which Mr. Johnson asked him.

You asked leave for Mr. Johnson to cross examine. Mr. Johnson is cross examining. He has asked the question and it may be answered.

(Mr. Tydings) Would you read the question to the witness please, Miss Reporter?

(The reporter read the question as follows: "Q. Now, up to that time there had been nothing improper, nothing irregular as to any meetings with the Department of Justice on behalf of Defendant Johnson or Defendant Boykin that you recall?")

(Mr. Williams) I think that question Mr. Johnson has put calls for a legal conclusion and I would like Your Honor to instruct Mr. Johnson to amend it to embrace only Mr. Johnson because I do not think it is a proper question to ask about other defendants in the case. I am not objecting to the question but I would like Mr. Johnson to conduct his cross examination for Mr. Johnson and not embrace other defendants within what I think calls for a legal conclusion.

(Mr. Tydings) Your Honor, Mr. Williams sat still the first time the same question was asked of this witness, embracing the same Congressmen. We did not object at that time. We do not object to the question at this time but we do object to any effort to restrict or not to permit the witness to answer the question fully.

(The Court) The witness may answer the question by

calling attention to any facts which have come to his attention since that meeting which he believes to be material and the Court will instruct the jury later as to the law.

(The Witness) Well, as I say, at the time we had any of these meetings, or telephone conversations, I had no knowledge of the facts that I have subsequently been told, that you apparently were receiving legal fees or at least receiving checks from either Edlin or Robinson.

So, if you want me to answer the question about the facts as I now know it, I would have to answer it one way.

By Mr. Johnson:

Q. Mr. Miller, may I ask you, you say you were told that; is that correct? A. That is right.

Q. Of your own personal knowledge, do you know of one check that defendant Johnson received from Mr. Edlin? A. Congressman, I do not. I did not investigate this case. I do not have any knowledge of any checks or any payments but, as I say, I have been informed that this is in fact the case.

Q. I asked you, though, personally, whether you knew of your own knowledge any check from Mr. Edlin or from any savings and loan association? A. I have never seen any such checks and you never informed me of the existence of any such checks.

Q. So, then, you have no personal knowledge? A. Of course not.

Q. Only what you have been told? A. Yes, which is the same thing, basically, about every case in the Department. If I had personal knowledge, I would have to investigate every case, myself, and that is out of the question.

Q. Yes, because you have a good many thousands of cases? A. Well, there are more than enough. Let us put it that way, Congressman.

Q. Now, Mr. Miller, let us get down to the meeting on

June 27, 1961, was there anything unusual that happened at that meeting? A. I do not recall anything unusual happening at that meeting, Congressman.

Q. Do you recall saying to defendant Johnson, "I would like your thoughts as to certain features of the indictment? Can you come over to see me some weekend, preferably on a Saturday or late some afternoon when there is no interference, just the two of us, that you can give me some ideas as to your thinking in this case?" A. Congressman, there is no question but that I offered to sit down with you. I offered to prepare myself to sit down with you and go over this case in great detail.

Now, my recollection, that probably occurred at the meeting of August 7 because we met for two to two and a half hours on August 24. I offered to sit down with you and go over the facts of this case because it is important to me that representatives in the Congress of the United States feel that the Department of Justice is not prosecuting the cases unfairly.

Q. I did not ask you whether you offered. I asked if you did not make the request of Defendant Johnson to come to your office? A. I will assume that I did. I do not specifically recall but I will agree with you that I did make the request, because I have an interest when someone challenges whether or not a prosecution is a valid one, I want to make sure that they understand the facts and the why and the wherefore of the prosecution.

Q. And did you not go further and say "I want to see you alone, just the two of us"? A. I could have. I do not really recall.

Q. And, as a result, did I not telephone, did not defendant Johnson telephone and the meeting was set up for August 24th? A. My recollection is that we decided right around the beginning of August. Now, whether it was August 7 when I saw you, or whether it was, as you seem to indicate, at the June 27th meeting, I have no independent recollec-

tion, but I do know that I wanted the meeting set far enough in advance because I knew it was going to take a substantial amount of time for me to review the case in detail so that we could discuss it intelligently.

Q. Now, you do recall that on August 24, there was a rather late afternoon meeting? A. That is frankly how I can pinpoint it because you came in alone at 5:28.

Q. And can you tell the jury that that meeting was pursuant to your request for a late afternoon meeting, or a Saturday meeting when there would be no interference? A. I will accept what you say, Congressman.

Q. Now, at that meeting, did you not ask Defendant Johnson certain legal interpretations as to the criminal indictment? I do not recall I asked you any legal interpretations. My recollection of that meeting is that we went down the legal issues point by point, and I stated the side of the United States Government and you indicated the side of the defendant and we went down the five or six or seven various issues that were in the case.

Q. And was it not a very general discussion? A. No, sir. This was a specific discussion, point by point.

Q. But generally, as to facts and as to law? A. Well, the facts we got pretty specific about the facts and, as to the law, I am not sure that I am such an expert in mail fraud that we could do more together than talk in generalities.

Q. Mr. Miller, may I ask you whether you did have all the facts, that it is not true as you testified on direct examination yesterday, that there was concern on your part as to the payment of the first dividend by First Colony whether it had been paid from earnings or whether it was paid from their capital structure? You recall that, do you not, sir? A. I remember that specifically, because of this reason Now, we had a discussion of whether or not the First Colony Savings and Loan Association was paying income or paying dividends to its depositors, either (1), out of capital which would be improper, or (2) out of the deposits that these

small depositors were coming in and putting in with savings and loan association, and there had been in fact, no earned interest. You will recall, I am sure, the fact that the only income that that corporation had, if my recollection serves me correctly, they had the so-called Friel mortgage which was in effect sold to it by First Continental which was another savings and loan association; the fact that they had actually capitalized expenses and then used those expenses and then, as the income came in, said "Now, we have income out of which we can declare a dividend properly," and it also seems to me that the facts were that they had legal advice that it would be improper to declare dividends out of anything but earned income. And that was one of the reasons we discussed this, why they went through the wash transaction with the Cassell Development, and wrote the same check back and forth the same day for $150,000.

Q. Now, is it not true that you desired more information on that transaction, bank transaction dealing with the Cassell matter? A. Well, you sent me later, I think shortly after the meeting, you sent me a copy of the bank statement from the First Colony Savings and Loan Association which showed that, as of the date of the Cassell $150,000 check and its return, there was money in the bank account to honor the $150,000 check but at the same time there were, according to the check book—you see, they had all these checks written and outstanding. If all these checks had been honored, there would not, in fact, have been sufficient funds in the bank to honor that check and you, as I recall, sent me a copy of the bank statement of the First Colony Savings and Loan Association and you sent one other document.

Q. And, Mr. Miller, that was after August 24, was it not, sir? A. Yes, that was, Oh, I would guess it was about—within a few days. Because I remember I subsequently wrote—you had raised the issue, too, as I think we discussed yesterday, you had raised the issue on the fact you kept pointing out that there—that nobody had lost a cent on this, nobody had lost a cent and without a loss, wouldn't that,

as a matter—I cannot recall the exact language you used, but you raised the issue that no one had lost any money and so I subsequently wrote you a letter, citing a case which pointed out that even though no one had lost money in a fraudulent scheme, nevertheless the case was well brought.

Q. Now, I want you to know, sir, whether at that meeting on August 24, 1961, that following our discussion if Defendant Johnson did not at that meeting state that Defendant Johnson was not entirely familiar with all of the transactions dealing with the defendants, do you recall that? A. I do not recall. He may or may not have said that.

Q. And do you recall, on the August 24th meeting that Defendant Johnson made the suggestion then that any further review should be with the attorneys representing, that is, of record, the attorneys of record of Mr. Edlin and First Colony? A. Congressman, my recollection of that is at variance with your recollection. My recollection is, and I don't recall at which meeting it was, but right, you will recall that when the conversation was over or towards the end of the conversation, I told you that I thought we had a pretty good case and we were going to go ahead with it and it was either shortly thereafter or right then, I do not remember, you suggested, well, how about an independent review? Whether or not you suggested that it be with the attorneys for the defendant, attorneys of record for the defendant, I do not recall, but I do know you wanted the case reviewed because you still felt that there might have been "vendetta" involved, or prejudice involved in bringing the case so you wanted in effect another review of the case and I said, "All right, I will be glad to set it up."

Q. It could have been, Mr. Miller, that it was at that August 24th meeting that the suggestion was made by Defendant Johnson? A. Now, wait a minute. Let us see if I can—well, it could have been. I could not deny it. It might have been at that meeting.

Q. And didn't defendant Johnson at that time tell you that Mr. Edlin and the First Colony—the others had their

own counsel? That this was a matter for further review by them and you thought it was a good idea? A. Well, I knew that they had independent counsel. I had been talking to Mr. Tydings about this case. I mean, you may have told me they had counsel but it was not news to me, Congressman.

Q. But did you not agree, Mr. Miller, that that would be the procedure to pursue without discussing further with Defendant Johnson the case? A. I would agree—well, I will leave off the last part. But I would agree with you. The only reason I have any hesitancy in agreeing with you on this is that it is my recollection that it was Congressman Boykin who, after seeing the Attorney General, called me and said, "Would you talk to G. C. A. Anderson" and then I notice there is a note in my book "G.C.A. Anderson was in that same afternoon."

Q. Go ahead and finish. A. In that same afternoon and he came in as the attorney for J. Kenneth Edlin and he was going to—he wanted to participate in this so-called independent review, or was going to or would I agree to have one and I said, sure.

But the idea, I do not recall when the idea was suggested, whether it was at the August 24th meeting. Whether Congressman Boykin suggested it to me. I know that he called and asked me if I would see G. C. A. Anderson. That is all I know.

Q. But you do not deny, do you, Mr. Miller, that on August 24 at the meeting referred to with Defendant Johnson, Defendant Johnson could have suggested to you at that meeting that the discussion following should be with the counsel for Mr. Edlin and for First Colony? A. Well, I will be as fair as I possibly can. I will agree that you said that.

Q. And, as a result, were there not meetings to follow with Mr. Anderson, the attorney for Mr. Edlin and the other attorneys in which Defendant Johnson was not pres-

ent? A. Oh, yes. We had a meeting on October 20. Actually, what happened Mr. Hargrove reviewed the case and he came over to my office on October 20, and Mr. Anderson was there, Mr. Robinson I recall was present. Mr. Kossack, the head of my fraud section.

Q. You are speaking now on October 20? A. Yes, this is on October 20.

Q. Did you not have a meeting with Mr. Anderson prior to October 20, 1961? A. Yes, that is the thing I referred to. I had a call from Congressman Boykin and he wanted to know if I would see Mr. Anderson. And that afternoon Mr. Anderson came in. And, as I recall, we may have discussed the case generally and he asked if we would have a review meeting and I think maybe at that time, I may have told him about the independent review. I really do not remember that too well. But he came in, I remember. He came in and I think the basic purpose was to set up or to see if I would set up a future meeting after this socalled independent review had been completed.

Q. So, after August 24 meeting, which you did not deny that Defendant Johnson had suggested that that be followed rather than Defendant Johnson to be present, there were meetings with counsel for Mr. Edlin for further review of the case, is that correct? A. Oh, yes.

Q. At that those meetings, neither Defendant Johnson nor Defendant Boykin were present, is that correct? A. You all were not present at the meeting with Anderson. That was the one meeting and the October 20th meeting. No, you were not present at that meeting, either. That is correct.

Q. And that continued until October 20. The final meeting was October 20? A. Yes, that was the meeting where the indepedent review that you wanted was made and the presentation was made in my office and at the conclusion of it we sent a memorandum to the attorney general that the case would be prosecuted.

Q. Now, in September, do you recall that Defendant Johnson was at your office with Defendant Boykin, do you recall a visit during September? A. Yes, September 14, Congressman Johnson and Congressman Boykin were in.

Q. Would you tell the jury—

A. And September 21.

Q. Would you tell the jury what occurred, if you recall, on that first meeting in September in which Defendant Johnson and Defendant Boykin came in to your office? A. Congressman, I do not really have any firm recollection of what went on. I do know that very probably the Cassell development was discussed because I know I asked Tydings for a report on the progress of the Cassell Development and he sent me over a report which was some time in this period. So, I assume that that was one of the subjects for discussion.

Q. Do you recall the Attorney General getting in touch or communicating with you on or about that time in respect to a visit that Defendant Johnson had with Attorney General Kennedy? A. Well, as I recall the way that ran, after the August 24th meeting and you understood that I felt that we should go ahead with the case, the next thing that happened there were, either you or Congressman Boykin went to the Attorney General and I know I got a request about September 1 or 2nd for another memorandum on the facts of the First Colony case, which I prepared, and sent upstairs on about September, I do not know, the first week in September some time. So that I know that you all had been back to see him. I do not know that but the request came down to me for another memorandum and I sent back another memo.

Q. Do you have knowledge as to what the Attorney General's testimony was in respect to a meeting with the Attorney General on September 7, 1961 with defendant Johnson? A. I do not.

Q. Well, to refresh your recollection did not Defendant

Johnson come to your office in September in respect to what Defendant Johnson termed were false rumors being circulated by Mr. Tydings in his district? A. Oh, yes, but I thought that was earlier than that. I thought that was earlier than September. Frankly, I thought that that was back in August, Congressman. The reason that I pinpoint it there, is because I remember I was testifying during this period of time on the Department of Justice legislative progress and I was up there quite a bit. I remember I was going up. You see, on August 4, on this exhibit "Call Congressman Johnson to postpone the 11 o'clock appointment." You had asked me to come to your office as I recall, and you told me at that time that you had heard from, what was it, a publisher in Elkton, Maryland, that Joe Tydings was saying that you all were fixing the case with the Department of Justice, and I said I could not believe that Joe Tydings would do such a thing but I called him. I place that in August, now I may be wrong.

Q. Did you say—would you say the Attoreny General was wrong if he said it was in September? A. I would not say the Attorney General was wrong.

(The Court) The witness was carefully instructed not to check on the Attorney General's testimony and you may ask him what he knows and you may argue the facts based upon what the witness has said.

(Mr. Johnson) Yes, but, Mr. Miller, you do recall a meeting with Defendant Johnson at which Defendant Boykin was present specifically to talk with you about a rumor being circulated in the District represented by Defendant Johnson?

(The Witness) I remember a meeting but I recall it as being with you and not with Congressman Boykin and I recall specifically what the rumor was.

By Mr. Johnson:

Q. And the rumor as you said was that there had been an attempt on the part of Defendant Johnson and Defendant

Boykin to interfere with Justice and that Mr. Tydings had made the statement, is that correct? A. That is right, and I called up and checked and found it was not true. The fact that the rumor had been—

Q. Did not Defendant Johnson say at that time that he, Defendant Johnson, had always made clear to you that there would be no interference with the Department of Justice in this particular case? A. I am sure that you did, Congressman. You made the statement many times during the course of these meetings.

Q. And did you not say that you knew that to be true and that you voluntarily told Defendant Johnson that you would call Mr. Tydings? A. Well, I certainly said that I would call Mr. Tydings and I did call Mr. Tydings.

Q. And you did? A. I did and it is my recollection I reported back to you to say that the incident had not occurred.

Q. And that is your testimony that you did report back to Defendant Johnson that the incident had not occurred? A. Yes, I am pretty sure I talked to you about it. Because—yes, that is my best recollection.

Q. Now, in the direct examination yesterday you spoke that you did not know which district Defendant Johnson was representing in Congress at the time of these visits? A. No, I do not think I testified to that, Congressman.

Q. Did you not testify that you were under the impression or that you had been given the impression that Defendant Johnson represented Southern Maryland at the time of these conferences? A. My impression was that these housing developments that they were talking about were in your district and that was the impression I got, either intentionally or unintentionally.

Q. Was it not true, sir, that not on one meeting but many that we were speaking of Southern Maryland, Waldorf? A. Right, Southern Maryland, Waldorf, Maryland, correct?

Q. And did you not know, sir, that Southrn Maryland is not in the First District of Maryland, what we term the Eastern Shore? A. I am sorry to say I did not.

Q. How long have you been living, sir, in and around Washington? A. I have been living in and around Washington since 1946.

Q. And in Maryland? A. I have been living in Maryland for eight years, probably or ten, maybe.

Q. You knew, did you not sir, that defendant Johnson lived on the Eastern Shore near Ocean City, Maryland? A. I think you told me you had a farm there on the Eastern shore.

Q. Mr. Miller, is it not true that during July defendant Johnson spoke of your visiting down near Ocean City at the farm? A. Yes, you wrote me a couple of letters. You wrote me a letter and asked me if I would not come down and bring my wife and spend the week end. I did not reply and then you wrote me another letter and I eventually wrote back and said that my schedule was too busy and I could not come.

Q. Is it not true, sir, that the telephone conversation during July for the most part was in reference to whether or not you would be able to get away from Washington, that particular one on July 14? A. I certainly do not recall that. My recollection is that it was—here is what I think. Didn't you call? No, I just do not remember. My recollection is that it was handled by letter. You wrote me a letter. I remember I did not get around to answering it for about a week and then you wrote another, a reminder that you received my letter of such and such—do you have the letters?

(Mr. Tydings) We have the letters here. Perhaps we had better have them marked in evidence at this time.

(The Court) If the cross examination is going to take more than a couple of minutes more, we had better take our morning recess. The jury may take a recess.

(Short recess.)

(The Court) Bring the jury in.

(Mr. Tydings) If Your Honor please, the Government would like to have marked and offered into evidence at this time two letters, one dated July 14, 1961, written on the stationery of the Congress of the United States from Thomas F. Johnson to Herbert J. Miller, Jr. A second letter written on the stationery of the Congress of the United States dated July 21, 1961, to Congressman Thomas —from Congressman Thomas F. Johnson to Herbert J. Miller and finally an answer dated July 22, 1961 from Herbert J. Miller to Congressman Johnson.

I ask that these be offered into evidence and I would like to read them to the jury.

(Mr. Johnson) I will be happy to read them to the jury.

(The Court) Mr. Johnson has the witness. If you want to offer them on redirect, you may, but if you offer them now, Mr. Johnson may use them as he likes.

(The Clerk) Government's Exhibit 155 marked in evidence.

(Government's Exhibit 155 marked in evidence.)

By Mr. Johnson:

Q. Mr. Miller, I believe before the recess we were speaking about the month of July, that Defendant Johnson had referred an invitation for you and Mrs. Miller to visit the Eastern Shore of Maryland.

Q. Yes. I do not remember the month, but whatever the letter says.

Q. And at that time, Mr. Miller, there had become a very friendly relationship between the defendant Johnson and defendant Boykin and you, Mr. Miller? A. They were very friendly without exception.

Q. In fact, is it not true that the meetings with you at

your office, you were always very courteous with coffee and with very warm hospitality? A. Thank you very much. I hope so.

Q. And during those conversations, you spoke about the hard work that you were doing, the burden that was on you with your new duties? A. I assume I probably did. I tell everyone who will listen.

Q. And, in response to that, did not defendant Johnson say that he had a farm on the water and a boat and for you to come down? There would be no work and no business transacted? A. I do not recall whether you said that in the letter or verbally.

(Mr. Johnson) If the Jury please, the Government has offered in evidence and referred to the letter of July 14, 1961, to the Honorable Herbert J. Miller, Jr., Assistant Attorney General, Criminal Division, Department of Justice, Washington 25, D.C.

"Dear Jack:

"I am wondering if Mrs. Miller and you could join us for a weekend at the farm near Ocean City during the present month. No business, just a couple of days of relaxation on the boat and in the surf.

"With kindest regards, I am

"Sincerely yours,

"Thomas F. Johnson"

The second letter is dated July 21, 1961.

"Honorable Herbert J. Miller
"Assistant Attorney General
"Department of Justice
"Washington 25, D.C.

"Dear Jack:

"The past week I extended an invitation for Mrs. Miller and you to join us at our farm near Ocean City for a week-

end during the present month. I am wondering if you received my note.

"With best regards,

"Sincerely,

"Thomas F. Johnson,

"Member of Congress."

Next is a letter dated July 22, 1961.

"Dear Congressman Johnson:

"I appreciate very, very much your very kind offer to relax at your farm. The press of trying to be an accomplished public servant has the unfortunate consequence of not leaving even weekends free. It was very thoughtful of you and I only hope that, assuming I still hold this job next summer, the offer will be renewed.

"Best regards,

"Sincerely."

By Mr. Johnson:

Q. Mr. Miller, I will go back just for a moment to the meeting on June 15, 1961, in which we referred to the previous meeting on the 12th of June 1961, where you had a report showing more than one conviction for Mr. Edlin. I ask you, sir, in fairness to Mr. Edlin, was it not true that that report was found not to be accurate; that he only had the one conviction? A. Yes. Actually there was the one conviction. The first case that was mentioned, which was in the late thirties, as I recall, apparently he had been tried and acquitted on that charge, so the record was inaccurate, because it said he had been convicted, and in fact he had been acquitted.

(Mr. Tydings) I am still having trouble hearing you, Mr. Miller.

(The Witness) I will repeat that. The record showed that the first case which was in 1937 or 1938—I forget the

exact date—had resulted in an acquittal rather than a conviction.

By Mr. Johnson:

Q. Which was not against his record? A. Which was not against his record.

Q. Now, on direct examination yesterday, Mr. Miller, you spoke of being advised of the difficulty with FHA approval in respect to the Southern Maryland property. Do you recall your conversation? A. I had just a vague recollection of that that you made some comment to the fact that there was some problem with FHA financing.

Q. And, is it not true, sir, that FHA, you were told that FHA had to approve the lending institution as to the loan on Charles County? A. Well, I assume that would be true. I do not know whether you told me that or not.

Q. And is it not true, Mr. Miller, that throughout practically all of the conferences with you, it was trying to solve the difficulty, the financing of this tract of land of Charles County? A. Well, I certainly was not trying to solve the financing difficulties of these land tracts, no.

Q. You were not? A. No. You all were coming in and saying that these reasons, representing these reasons as to show that is the basic reason, as I understood it, why you wanted a review of the indictment.

Q. Well, did you make any effort or give any assistance in helping defendant Johnson and Defendant Boykin try to solve the problem with FHA in respect to financing of the project? A. I have no recollection of calling FHA or looking into that at all.

Q. Do you recall a conversation with Defendant Johnson about Mr. Edlin being alledgedly connected with First Continental and therefore First Continental would not be approved by FHA as a lending institution? A. I do not remember that specifically but that probably was—that probably—my recollection is and this is really vague

because I think it was towards the first. I do not think there was ever much stress put upon the FHA but at some time it was mentioned that there was a problem getting FHA financing.

Now, I will assume with you that one of the problems might have been the fact that Mr. Edlin was connected with one or the other of the savings and loans and this might have been why they would not approve the project. I really do not know.

Q. Do you recall one meeting with you in which defendant Johnson and defendant Boykin spoke at some length as to whether you had any suggestions as to meeting this difficulty with FHA in not approving the lending institution? A. No, I do not recall that.

Q. Do you recall the discussion that First Continental Mortgage Company was the owner of the B stock of First Continental Savings and Loan? A. Well, I do not know that I recall conversation on that point. I certainly recall finding that out when I went in to the file in detail, that actually the First Continental was, as I recall, the holder of either the A or B stock, I have forgotten which.

Q. Well, Mr. Miller, do you recall, in an effort to be of assistance, of making these suggestions that perhaps a voting trust could be set up for the B stock of First Continental Mortgage Company? A. No, I have absolutely no recollection of that at all.

Q. You do not remember that. Now, Mr. Miller, yesterday the government offered into evidence Government exhibit 144 which is what you have before you? A. I have it before me, yes, sir.

Q. Yes. Now, on direct examination did Mr. Tydings examine you as to all of the items that appear in that exhibit? A. No, my recollection is he left out the last two. In 1961 on the grounds that they were not within the indictment period.

Q. But it is in evidence with the exhibit reference? A. Yes, it is admitted in evidence.

Q. Referring to the exhibit, what—I will withdraw that first. You say that Mr. Tydings objected to the last two because—

(The Court) He did not object to it. He did not read it.

(Mr. Johnson) The witness has testified he objected to it because—

(The Court) The witness is not running this trial, the Court is. Mr. Tydings said he would not read that to them. It is in evidence; if you wish to read it to them, you may do so.

(Mr. Johnson) May I have the last question and answer of Mr. Miller.

(Question and answer were read by the reporter.)

By Mr. Johnson:

Q. You remember that question and answer? A. Yes.

Q. Referring to the exhibit, the item under date of December 11th and 12th, were you asked as to those items? A. I was indeed, yes.

Q. Now, the item under December 27th and 28th, is not that in the same month? A. It is.

Q. Now, would you tell the jury what on December 27th does that disclose? A. Reading from Exhibit 144, "December 27th. Call Congressman Johnson 180/5464."

That means I called you.

"Out touring district. A. A. Buarque will be in tomorrow."

December 28th, 12:15. I called A. A. Buarque of Congressman Tom Johnson's office; and at 12:55 Mr. Buarque called back and left the note that Congressman Johnson can see Miller in the Congressman's office at 3 p.m. Tuesday, but if urgent at 3 p.m. tomorrow (Friday).

Q. Were the calls that you made on December 27th and 28th in response to any request that Defendant Johnson had made to you? A. No.

Q. They were entirely your calls? A. They were entirely my calls.

Q. Now, can you tell the jury whether or not on January 3, 1962, you did meet with Defendant Johnson? A. On January what?

Q. Third. A. Well, I certainly met with you right in that period. I will assume it was January 3, yes.

Q. Where was that meeting? A. That meeting was in your office.

Q. Do you remember the time? A. I do not recall the time, no.

Q. If I tell you that it was at 3 p.m. in the afternoon would that be about the correct time? A. I will accept your recollection.

Q. Now, who was present at that meeting on January 3, 1962 at Defendant Johnson's office in Washington? A. Just the two of us.

Q. Now, is it not true, Mr. Miller, that at that meeting you stated that there had been complaints about a speech and about visits to the Department of Justice? A. Well, my recollection is, I do not recall the speech, but I may have mentioned that but what I came down there to tell you as is the policy of the Department, that we had sufficient evidence to warrant the commencement of an investigation with respect to your activities with the Department of Justice. And that I was frankly, very sorry myself, that I had to tell you this but in view of the evidence that we had received, we had no choice but to commence an investigation and we were going to do so.

That I was hopeful that and expected, I may have even said that I expected, that the investigation would come to nothing.

Q. Now, at that meeting was there not further discussion as to the legal work that defendant Johnson had done in respect to the land companies? A. You may have mentioned to me that you did legal work for the land companies, yes.

Q. Well, as a matter of fact, Mr. Miller, were you not told that Defendant Johnson represented—

(Mr. Tydings) Your Honor, I do not object when he got outside the indictment period but Congressman Johnson is phrasing each question so that he, in effect, is testifying before the jury here. Now, he will have, if he elects, an opportunity to testify and present facts which he feels are pertinent to the case but I do not think it is proper cross examination when you get to an area outside of the indictment period No. 2, and which merely affords him an opportunity to testify when he cannot be cross examined and, therefore, I object to any further questions along this line after the indictment period.

(The Court) I do not see at the moment why things which Mr. Johnson may have told the witness after the first of January, 1962 have any bearing on any proper cross examination of any point that the witness has testified to. I will be glad to hear from Mr. Doub, if you want. Of course, if you want to make him your witness and open your defense, you may do so.

(Mr. Doub) I would say this, Your Honor, without objection from the government, the witness has testified to part of that conversation. I think that we are entitled to put in the full conversation. If Your Honor rules otherwise, I would like to come to the bench and make a full proffer of proof.

(The Court) Tell me what you propose to proffer.

(Bench Conference.)

(Mr. Doub) We proffer to prove, Your Honor, that after the statements that the witness has just testified to that he had started this FBI investigation, that he had then

said that he was embarrassed to have to tell Mr. Johnson this. Mr. Johnson replied "I appreciate your coming over here. I appreciate your embarrassment. You certainly know there was no pressure and that I did nothing improper in the Edlin case."

Mr. Miller then said to Mr. Johnson, words to this effect—"There is nothing for you to concern yourself about. It is merely routine and I know everything is all right."

* * * * * *

[Tr. 2222-2239]

CROSS EXAMINATION

By Mr. Williams:

Q. Mr. Miller, I believe that you testified on direct examination that it was on April 22 of 1961 when you went up to the Attorney General's office at the tail end of a meeting which he was having with Mr. Boykin and Mr. Johnson in his office. A. I think that was on cross examination.

Q. Was it on cross examination? A. I testified that I went up and I think it was April 12. Unfortunately, you see, it is not on this list.

Q. We have an exhibit here that I think might help Mr. Miller, Mrs. Zielinski, No. 108. A. Yes. I assume that this was the meeting of—after April 12, even though this exhibit does not show Congressman Boykin being present. But the reason, I will give you how I place it because I know I was not at the first meeting which is listed here, March 25 where Congressman Boykin and Congressman Johnson were present. But, I am quite positive I went up to a subsequent meeting shortly after the March meeting and got in just at the tail end of the meeting.

Q. Does it refresh your recollection that when you went to that April 12th meeting at the tail end of which you entered— A. Yes.

Q. —that Mr. Boykin was not present at that meeting? A. Mr. Williams, my best recollection is that Congressman Boykin was present and Congressman Johnson, both, were present. I am really quite positive of it.

The only problem I have is which meeting it was and yet this is probably the only one it could have been.

Q. Let us see if we can reconstruct it this way, Mr. Miller. Was it the Attorney General who introduced you to Mr. Boykin the first time, or was it Mr. Johnson who introduced you to Mr. Boykin? A. My best recollection is that I was introduced to both of them in the Attorney General's office at this meeting—the date of which I assume was April 12.

Q. Could it have been the March 25th meeting, Mr. Miller, to which you were called? A. I am quite positive it was not the March 25th meeting because (1) the memorandum was not discussed at the meeting I attended and it was quite apparent to me that the two Congressman had been in to see the Attorney General before on this matter.

So that my best recollection—I know I went up to the meeting. I am sure it was not March 25, therefore, I assume that it has to be the April 12th meeting.

Now, the reason, one other reason that I am quite sure it was that is because I think that I had been introduced to Congressman Johnson when he came in to see me on April 17 alone and the only place I could have possibly met him would have been up in the Attorney General's office.

Q. On May 3rd when Congressman Johnson and Congressman Boykin came in to see you, to the best of your recollection as of today had you met Congressman Boykin before that meeting? A. Yes, my best recollection is that I did know him and that I must have met him at that April 12th meeting.

Q. Now, I think that under cross examination by Mr. Johnson, you said that it was on April 17 that there was

called to your attention the fact that Mr. Edlin had some information to contribute with respect to the so-called some information to contribute with respect to the so-called Dranow treasury note? A. Mr. Williams, I think my testimony was that that information was called to my attention on May 3.

Q. May 3. A. Yes. Because, you see, the following day, I got a letter.

Q. Right. A. —from Congressman Boykin and he attached to it an exhibit which was this statement—was it by Robinson, concerning Edlin's relationship.

Q. Does that help you, Mr. Miller, in trying to reconstruct these meetings in determining whether that was at the first meeting at which you had seen Mr. Boykin or at a subsequent one. I will rephrase it. Did Mr. Boykin in the first meeting which you participated in with him tell you that Mr. Edlin had some information on the so-called Dranow treasury note? A. Yes, the first time I met Mr. Boykin he brought up this memorandum.

Q. Now, that was on May 3rd, then, was it not? A. That is right.

At the first time that I met Mr. Boykin in my office, let me make this sure. Yes.

Q. And then on the very next day, May 4, he sent to you, did he not, a memorandum regarding the so-called "Dranow treasury note"? A. Yes.

Q. That was May 4? A. Right.

Q. That was after the meeting in which he mentioned to you the so-called Dranow Treasury note? A. Yes.

Q. And he mentioned the treasury note the first time you saw him, did he not?

(Mr. Tydings) Do you mean in his office or upstairs in the Attorney General's office?

(Mr. Williams) At any time?

(The Witness) I do not know. I have gone through, trying to place this date so much, Mr. Williams. My best recollection is that I did meet him upstairs. I know it was not at the March 25th meeting and when he—and I am almost convinced that I knew him when he came in on the third.

By Mr. Williams:

Q. But, in any event, in your role as Assistant Attorney General in charge of the Criminal Division you found out that prior to the time that he told you about Edlin and the Treasury note, he had made that disclosure to the Attorney General some time before? A. Yes, he had told the Attorney General about that some time either in March or prior thereto, it is my understanding, and had supplied one of the Attorney General's assistants with a copy of the memorandum which he furnished to me subsequently on May 3rd.

I did not know of the existence of that memorandum.

Q. But you, sir, ascertained, did you not, that that information was given to the Attorney General or one of his representatives, prior to the very first meeting that appears on any of these exhibits, either 108 or 144? A. My recollection is that there is a letter from Congressman Boykin which is dated about the middle of March, maybe March 17 in which he refers to the fact that he is either transmitting or has transmitted this memorandum to the Department and that would be prior to the March 25th meeting.

Q. What he transmitted to you? A. Well, actually it was to Mr. Sheridan.

Q. Well, to you on May 4? A. Yes.

Q. If I may have No. 154. Thank you, Mrs. Zielinski.

Was a memorandum signed by Mr. Robinson regarding the Dranow matter? A. That is correct.

Q. Now, I direct your attention, Mr. Miller, to the first sentence in that memorandum and ask if it refers to a so-called Sun Valley project, Sun Valley, Florida? A. Sun Valley project.

Q. Now, that was a matter, Mr. Miller, on which you had considerable information as a result of a case in which you had participated prior to your coming to the Department of Justice, is not that right? A. Haven't we both?

Q. So you knew about that, did you not? A. I did. I knew about the Sun Valley project.

Q. Yes, and Mr. Sheridan had been given, if you know, sir, the memorandum, a copy of which you hold in your hand, back in March because his primary engagement was with matters affecting Hoffa and the Teamsters Union, is not that so? A. Well, I cannot testify of my own knowledge that this memorandum was delivered to Sheridan but I will agree with you that it was because I have looked at the file and I am quite positive he got this particular memorandum on about the 17th.

Q. That would be given to Mr. Sheridan or was given to him because he was primarily engaged in investigative matters involving the Teamsters Union and Hoffa, is not that so? A. Well, he is involved in such matters, yes.

Q. Now, thereafter, when you had occasion to assign two attorneys to interview Mr. Edlin, which I believe you said was on May 22, Mr. Miller— A. Yes, that is my best recollection.

Q. —do you recall to whom you sent them? A. Let's see now, that would probably be Bill Ryan and Tom McTiernan.

Q. Are they attorneys who are working in the same section of the criminal division as Mr. Sheridan works? A. Yes.

Q. Do they work under the supervision of Mr. Sheridan? A. Yes.

Q. And they are primarily concerned with matters affecting Teamsters Union activities and Hoffa? A. That is correct.

Q. Now, at the time that Mr. Meyer came into your office, which I believe was on June 15, 1961, is that correct? A. Yes, that is my best recollection.

Q. And you were otherwise engaged to the point that you could not spend time talking to him, you sent him to be interviewed by Mr. John Cassidy, is that correct? A. Right.

Q. And, is not Mr. Cassidy likewise engaged in the same investigative matters in which Mr. Sheridan is engaged? A. Yes, he works with Walter Sheridan.

Q. He works directly under Mr. Sheridan? A. Yes, he works with Mr. Sheridan.

Q. And when you say "he works with Mr. Sheridan," again it is on an investigative matter relating to the Teamsters Union and Hoffa, is it not? A. Well, actually, of course, it goes beyond investigation because, as the cases arise, sometimes we send the attorneys out to try the cases.

(Mr. Tydings) I am sorry. I can't hear you.

(The Witness) It is more than investigation because when a case arises, many times we will send the lawyers out to prosecute the case and they actually are trying cases.

If you are making a distinction between investigation.

By Mr. Williams:

Q. Investigation and prosecution of cases involving the Teamsters Union and Hoffa, is that not so? A. Yes.

Q. Now, on June 15, when Mr. Meyer was interviewed by Mr. Cassidy, it was for the purpose of preparing a report for you, was it not? A. Yes.

Q. And he did, in fact, did he not, on June 16 of 1961, prepare a report for you? A. He prepared a report. I will accept your timing. I do not know what date it was prepared. He did prepare a report. I do not know the date.

Q. May I have Government Exhibit 125 for identification, Mrs. Zielinski?

Without going into the contents of the report, Mr. Miller, I am going to hand you Government Exhibit 125 which has been marked for identification and simply ask you whether that is, in fact, the report which Mr. Cassidy prepared for you on June 16 of 1961? A. I assume that this is it. The only reason I hesitate, I thought that there was a heading on the original but this sounds familiar. I thought there was a memorandum.

(Mr. Tydings) The Government is satisfied that that is the document, a copy of it, which Mr. Williams is referring to.

(Mr. Williams) I would like to establish Mr. Miller's satisfaction on that score.

(Mr. Tydings) I am just trying to be helpful.

(The Witness) I assume it is. The only reason I have any hesitation, I thought the one which I had, had a "To and From" on it. I have skimmed through it and it appears to be a copy of it.

By Mr. Williams:

Q. So that, as of June—I should ask you to strike that last start of a question.

You did read this at the time, sir, that Mr. Cassidy sent it to you, is that correct? A. I would read that at some time in that period, yes.

Q. And, as I understood your cross examination by Mr. Johnson, pursuant to the request of the Attorney General in April of 1961 you had reviewed what I will call, the Edlin file for purposes of easy identification, and had written him

a memorandum on the case? A. I did not review the file and prepare the memorandum. I had asked one of the attorneys in the Criminal Division, I think it was Jim Knapp, to prepare a memorandum and I think that that was prepared about April 10.

I may or may not have looked at the file but I know that I had seen that memorandum because I had sent that on up to the Attorney General.

Q. I take it, Mr. Knapp analyzed the case and wrote a brief report, giving his evaluation of the case from the point of view of its strength or weaknesses as the Government evaluated it? A. Yes. I will agree with that. I do not remember exactly what was in it but actually it was a summary of the case, what the facts were, what the charges were.

Q. You read that, I take it, Mr. Miller, before you submitted it to the Attorney General? A. Yes.

Q. So that, certainly by June 16 of 1961, you had, what I will characterize—and you correct me if I am in error—a fairly good working knowledge of the Edlin case, and a fairly good working knowledge of Edlin's background as it had been developed through Mr. Meyer by Cassidy? A. Well, it is very difficult when you say "working knowledge," Mr. Williams, because I did not actually get down to the basic facts of the case and go and actually read the report in toto.

Q. Right. A. Until later. I remember, when I started reading the report before the meeting of June 12, I was in the middle of the—it was a report of the Post Office Inspector, and that is where I came across this statement about Mr. Edlin's background, if you will. But, really, it was not until prior to August 24, the August 24th meeting with Congressman Johnson that I had actually taken enough time to go through the file to familiarize myself sufficiently with the facts and the law that I could go into the case.

Q. When you did familiarize yourself thoroughly with the file, you had a conference with Mr. Johnson on August 27 of 1961, at 5:28 p.m., I think it was? A. I believe it was August 24. We can check that Exhibit. If it shows the date of 5:28, I think it is the 24th.

Q. Yes, you are right, August 24, 1961, is that correct? A. Right.

Q. And that was the occasion I think, Mr. Miller, you said that you sat down with Mr. Johnson of Maryland and you discussed the evidence and the issues in the case, point by point. A. Well, I do not know if that is exactly what I said but, in effect, that is what we did. We went through the issues of the case.

Q. In other words, you would take an allegation that was made against the defendants and state what the Government's position was and Mr. Johnson would state what the defense to it was? A. That is correct.

Q. So that, as a result of the conference that you had on that occasion, which I think you said lasted about two hours— A. It was approximately, I would guess, two to two and a half hours.

Q. —At the end of the conference you, as the Assistant Attorney General in charge of the Criminal Division had been supplied with the defense of the defendants to the allegations of the indictments, right? A. I do not know if it was the defense of the defendants because I did not realize that Congressman Johnson was representing the defendants. I mean, this was what his view was of the case.

Q. Yes, he gave you his view? A. Assumed that was his view.

Q. Well, was it his view as to the defenses to the case as you delineated it on behalf of the Government? A. I missed that.

Q. I say, was he giving you his view, in so far as you know, of the case in so far at is constituted defenses to

the allegations of the Government? A. I assume it was his view. I do not know whose view it was. He was giving me arguments that normally you would expect to come from the defense, yes.

Q. And, at the end of the conference, you said to him, "I think it is a case that we should prosecute," was that your conclusion? A. It was my conclusion.

Q. And it had been your conclusion from the beginning, had it not, after your first look into the case? A. Yes. The recommendations to me, of my staff, all the way through this, commencing with the first memorandum I had prepared on April 10, was that it was a case that should be prosecuted.

Q. And you did not waiver from that view; you continued in that position, that it was a case that should be prosecuted? A. I mean, that was my position and I must say that it was the position that was, the correctness of it, was reinforced after I had an opportunity to get down and actually go into the case, itself.

Q. Now, did there come a time, Mr. Miller, when there came to your Division, if you can recall, a suggested disposition of the case from the United States Attorney's office in Maryland? I would fix that some time in November or October of 1961. A. The answer is yes.

Q. And did that suggested disposition of the case, which came from the United States Attorney's office in Maryland, get your approval? A. Yes, what was that—it was the letter. I recall now, it was the letter, Mr. Tydings wrote me a letter and he set forth the suggested disposition of the case and asked if I concurred, and I either wrote back or told him on the telephone, it is fine with me.

Q. And your concurrence was in no way influenced by any factors other than the evidence that you had in the Department of Justice and that you could produce in court and in the law as you believed it to be applicable to that

evidence, isn't that so? A. I hesitate—could you read the question again?

(Mr. Tydings) I do not think the witness understands it but he is a better man than I am if he does.

(Mr. Williams) I will state it again, if you wish. I will try to state it more clearly.

By Mr. Williams:

Q. Your concurrence with the suggestion that was made for disposition of the case by Mr. Tydings' office was the result of your evaluation of the evidence that the prosecution had and of the law applicable to that evidence, was it not? A. Well I think I would almost have to answer that in the negative, Mr. Williams, because I—I mean, the case was a case, as far as I was concerned. That was the determination I was interested in.

Q. Right. A. And from then on, whatever disposition was made, I looked upon as something in Mr. Tydings' bailiwick. True, he wrote me and asked me, because I had talked to him off and on through the year about the case, but, as far as I was concerned, the disposition suggested by him was satisfactory.

Oh, I will take it back. There was one additional fact that I suggested and it must have been about this time, I suggested to Mr. Tydings that, if Mr. Edlin was going to plead, it might be helpful if we could work out an agreement that he would cooperate with respect to his testimony about the treasury note.

Q. Yes, but, Mr. Miller, your concurrence, or your approval, if you will put it that way, of Mr. Tydings' recommendation was in no way influenced by any extrinsic consideration by Mr. Johnson's visit to you or by Mr. Johnson's evaluation of the case, was it? A. No.

Q. It was a determination that you made wholly on your own after getting Mr. Tydings' recommendation, influenced

only by Mr. Tydings' recommendation, is that not so? A. You mean in so far as the sentence—

Q. The disposition? A. When Mr. Tydings wrote and made the suggestion, I mean, I just approved it as a matter of course.

* * * * * *

[Tr. 2241-2252]

(Mr. Genn) Your Honor, I have made, as you know, innumerable motions with respect to conclusions drawn by the witness and so forth. The concern I have is that I objected to this type of testimony with reference to conclusions and its effect upon this factor of prejudice that I have mentioned but I am concerned, also, about the fact that were I to cross examine with reference to the conclusions that he has drawn under the ruling that the Court has indicated to me, I might be waiving the objection that I have previously made to the conclusions that have been drawn.

(The Court) What conclusion?

(Mr. Genn) As to the strength of the case. As to his feelings about the case. What he felt and his opinions.

Now, I have objected to that continuously throughout and there has been continuous questioning about it but, if the Court's opinion is that my objection to that, and motions in reference to that are all going to be waived, I will not cross examine on it.

(The Court) Mr. Tydings, do you agree that Mr. Genn may cross examine the witness without waiving any motions that he may have? I suppose you mean as objections to the evidence, or on motions for mistrial?

(Mr. Tydings) No, I do not agree, Your Honor.

(The Court) Why not?

(Mr. Tydings) Because I think that the Government has bent over backwards in this case with every defendant. I think that every time we have a ruling on evidence, we

have bent over backward to be helpful with the Judge, but time after time, the rulings have been with the defendants and in some cases, where I, personally, thought purely against the law, and you asked me what our position is, and I tell you our position. We think that we have bent over backwards in this case.

* * * * * *

(Mr. Genn)

But I will move then—so the record is clear— to strike those portions which deal with conclusions of the witness as to his feelings about the strength of the case and the matters that I have previously moved to strike on. This was exactly the same objection that I have made at the direct testimony. Must I make it every time a defendant gets up and questions about it in cross? I will just disrupt this trial endlessly. I presume, and I would think reasonable, that the Court would not require me to get up at every question that Mr. Williams or Mr. Doub or Mr. Johnson asks and when they are questioning about conclusions, have to say "Objection, Objection, Objection."

(The Court) I would be happy at any time you made such an objection, to instruct the jury that the strength of that case, or the witness' opinion or the strength of that case against Edlin is not to be considered against Edlin.

(Mr. Genn) You have so instructed the jury previously.

(Mr. Tydings) As evidence of the character of Mr. Edlin but we strongly take the position that when those facts were communicated by the Assistant Attorney General and the Attorney General to Congressman Johnson, a conspirator, that the reasonable inference any reasonable juror would make would be that he communicated these things back to the other conspirators. I think there is a difference.

* * * * * *

(The Court) I will tell you now in the presence of everyone what I have told you, I think, on the record before and that is that, if you have a point on this, it seems to me

to be primarily if the jury should happen to find Mr. Edlin and Mr. Robinson guilty and not find either Mr. Johnson or Mr. Boykin guilty.

Now, for the rest of it, as to Edlin, he can't be found guilty unless Mr. Johnson is found guilty on the 7 particular counts. We have all agreed on that. You cannot find the aider and abettor unless you find him guilty and I do not see how Mr. Edlin can be found guilty of the conspiracy counts unless either Johnson or Boykin is found guilty, too.

It may be theoretically possible. I think your motions come at that point. Now, when this conspiracy is the result of apparent—your client, according to the evidence, spending practically every day in these other people's offices as the evidence shows, what goes on and what may reasonably be inferred are factors which must be taken into account on whether particular statements made were properly—are properly admissible as part of acts in furtherance of the conspiracy and as essential background of acts for which the other defendants are seeking to give innocent explanations which is what I understand the purpose of some of the cross examination has been, to show that certain things done by the alleged co-conspirators were innocently done and it is going to be for the jury to say what the nature of the whole transaction was, but I just do not see how this case can be tried either against everything together or against Edlin separately without all of this evidence being equally admissible.

(Mr. Genn) I think, had it been tried separately, much of this evidence, particularly of the more prejudicial nature would not have been brought into evidence.

Much of it you, yourself, have pointed out has come through cross examination by the other defendants and that would not have occurred had there been a severance or mistrial granted.

(The Court) The conspiracy was one that had to be

tried together in fairness to the administration of justice and I do not think that anything has come in so far that has prejudiced your defendant.

* * * * * *

Volumes 21 and 22 have argument of counsel on motions by all defendants for judgment of acquittal. The Court ruled as follows (T. 2578-2579):

The motions are denied, with the right in the defendants to raise all of these points again at the conclusion of the whole case and particularly that the Court will undertake to examine again this question of one or two conspiracies, and on what theories the case should be allowed to go to the jury on the first count much more carefully after the end of the case than we have gone into that particular aspect of it at this time.

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[2590] OPENING STATEMENT ON BEHALF OF DEFENDANT BOYKIN

Mr. Williams:

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[2605] Now, at this point, members of the jury, in July of 1961, let us look at the picture. The Charles County Land Company, which I will call, for purposes of identification, an Edlin company, owns the Waldorf tract. There is a mortgage outstanding running to Albert Ernest who is really speaking for Tensaw, in the amount of $5,875,000 payable in 17 years. At the same time the Virginia property is held by another company formed by Mr. Edlin known as the Leisure City Land Company, a separate and distinct corporation. It owns title to the Brooke, Virginia tract, the 5,000 acre tract, and it has a mortgage running to Tensaw in the amount of $2,875,000.

Before the month of July was over, before July of 1961 had reached its end, the evidence will show that Mr. Edlin was offered a profit on the Waldorf tract of a half a million dollars by a major New York corporation, willing to come in and take his position and give him a half mil-

lion dollars profit on that ground, and he rejected that offer. And before the year 1961 was over, a company known as the FEDA Realty Corporation began negotiating for the whole shooting match. The FEDA Realty Corporation was a company headed by a man named Frank Finneran from Connecticut, an experienced developer and builder. He had two associates, one [2606] named Curtis Ivy and the other Louis Houck, and they had wide experience in developing real estate and erecting large-scale housing projects. They came in and on December 7, members of the jury, of 1961, December 7, they closed the deal with Mr. Edlin and the terms of the deal were these: FEDA Realty Corporation bought all of the stock of Charles County Land Company; FEDA Realty Corporation bought all of the stock of Leisure City Land Company. The only assets, members of the jury, that either of those companies had was the land, Charles County having the land in Waldorf, Leisure City having the land in Brooke—no cash in the bank, no other assets of any consequence.

And what did FEDA Realty Corporation pay for this? The evidence will show that the terms of the deal were that FEDA would pay $6 million for the stock of Charles County Land Company and Leisure City Land Company. They would assume the existing mortgage running from Charles County Land Company to Mr. Ernest in the amount of $5,875,000. They would assume the existing mortgage running from Leisure City Land Company to Tensaw Land and Timber Company in the amount of $2,875,000.

Members of the jury, on December 7, 1961, the books of the Charles County Land Company showed that Charles County Land Company owed to First Continental [2607] Savings and Loan Association and to First Colony Savings and Loan Association $1,250,000. That entry must be explained by other parts of this defense, by other defendants. We have no information or knowledge as to how that indebtedness was acquired and can give you none.

But also the books of Leisure City Land Company showed an indebtedness running to First Continental Savings and Loan Association of $453,750 and FEDA Realty Corporation said, as part of the deal, "We assume those liabilities. We assume the debts." If you tally up the $6 million that FEDA Realty Corporation agreed to pay for the stock of those two companies, the two mortgages that they assumed, one in the amount of $5,875,000 on Charles County, and one in the amount of $2,875,000 on Brooke, Virginia, and the debt that they assumed of $1,250,000 running to First Continental and First Colony, and the debt of $453,750 running to First Continental, you find that that land was transferred in 1961, just 7 months after the Edlin group got it, for $16,453,750, or a cool profit of over $6 million before the year was out.

Now, very shortly after this deal was completed, First Colony and First Continental Savings and Loan Association were put into receivership and auditors were called in and they audited the books and records of [2608] each of these associations. And when they had audited the books and records completely on the Charles County Land Company indebtedness, the one that showed $1,250,000 running as a debt from Charles County Land to First Continental and First Colony, the auditor concluded that that debt was really only $649,000. It was only $649,000 of money that he could attribute as having gone out of First Colony and out of First Continental property chargeable to Charles County Land Company and Finneran of FEDA Realty Corporation, went out and he got a development loan to go forward on the development of the Charles County Land Company and the first thing that he did was to pay the First Colony and the First Continental the full amount of the indebtedness shown by the audit, dollar for dollar, $649,000. The reason that he was able to get this loan from a company called Kirkeby Natis and a company called Bradford Finance Corporation because Tensaw Land and Timber, Mr. Boykin's company subordinated its whole mortgage on that land and took second position so that today it holds Charles County

Land Company so that FEDA could go out and get money for development purposes, a large section of which was paid back to the S & L's dollar for dollar in the Charles County deal.

Now, the evidence will show that a similar [2609] audit has been made on the Leisure City Land Company indebtedness running to First Continental. And that audit, it is my information, has just been completed and a figure is being arrived at right now on the true amount of moneys that went from First Continental into the Virginia deal and it is Finneran's intention, out of his new development loan to pay that back. And that may happen before this trial is over.

Now, members of the jury, to conclude this complex of land transactions, the evidence will show that this year Mr. Edlin and Mr. Finneran negotiated their indebtedness, FEDA and the Edlin group and they have now settled out. They settled out at a figure considerably below what the original contract called for because there were certain inabilities to perform by the Edlin group but still, even at the settlement figure, the evidence will show that that land was transferred by the Edlin group and the final dollars were paid only a few months ago at a profit and a large profit.

And so I say to you that we will show you in our defense that those land transactions were totally arm's-length transactions, bona fide transactions, and that in the final analysis, Tensaw ended up, after its experience with the Edlin group, in a much less advantageous position that it had theretofore been in because now, [2610] the evidence will show you, that the Ernest Estate, Mr. Ernest now being dead, the Ernest estate which, for all purposes of this trial, is the same as Tensaw, has only a second trust on the land at Waldorf, and Tensaw Land and Timber has subordinated its position on the land at Brooke so that when the new developmental loan is effected, it will likewise have only a second trust or second mortgage on that land, and it is the second mortgage that

runs for 17 years instead of the first trust that they had back in 1961 which ran for only ten years.

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[TR 2614-2651]

MR. MANUEL BUARQUE

By Mr. Doub:

Q. Mr. Buarque, where do you live? A. 5800 - 63rd Avenue, Riverdale, Maryland.

Q. Are you originally from the Eastern Shore? A. I am legally from Dorchester County, Maryland.

Q. During what period of time were you administrative assistant for Congressman Johnson? A. From January 7, 1959 until through January 2, 1963.

Q. In other words, you were his administrative assistant during the full four years that he was a member of Congress? A. Yes, sir.

Q. What did you do before that, sir? A. I was an ordained Methodist Minister and a public school teacher.

Q. When did you leave the ministry? A. I left the ministry to come with Congressman Johnson when he started his term of office on January 7, 1959.

Q. Where did you teach school? A. North Dorchester High School in Dorchester County, Maryland.

Q. Now, will you tell us how Mr. Johnson's Congressional office was organized? A. I was his administrative assistant. We generally had the staff assistant, Mrs. Kiernan and two girl secretaries and one receptionist.

Q. I suppose those girls were located in the outer office, were they? A. Yes, sir.

Q. Was your desk in the outer office, too? A. It was. It was facing the door to the inner office where Congressman Johnson had his desk.

Q. Now, what were your duties, sir? A. My duties

were, as his administrative assistant, to draft speeches, to draft scripts for radio programs; we had 8 radio programs. I also worked on legislation. I had full charge of the office.

Q. Office personnel? A. Yes.

Q. And office management? A. That is correct.

Q. You mentioned radio scripts; what kind of scripts are you referring to? A. We had weekly radio programs, eight of them, on various radio stations throughout the District.

Q. Were those talks or speeches by Mr. Johnson over the radio? A. Yes, they were weekly radio speeches.

Q. Did the office also issue a weekly newsletter to constituents on the Eastern Shore? A. Yes, we got out from, between almost 7,000 to 35,000 a week.

Q. And did you assist in the preparation of those? A. I did.

Q. Was this an easy-going or a hard-working Congressional office? A. It was considered one of the hardest-working Congressional Offices on Capitol Hill, sir.

Q. What committees was Congressman Johnson on?

A. In 1960, he was on the House Committee of Merchant Marine and Fisheries. In 1961 they gave him the important assignment in the House Committee on Foreign Affairs.

Q. And he continued as a member of those committees as long as he was in Congress? A. Yes, he did, sir.

Q. You mentioned that you drafted some speeches for Mr. Johnson; did he deliver those speeches as you drafted them? A. He edited my speeches that I had rough drafted for him, and he scrutinized them carefully, and then, if he saw they merited delivery on the floor of the House, he did the same. Generally, his speeches, sir, were in regard to legislative activity.

Q. If he did not like your speech, what would be do? A. He would throw it in the trash can.

Q. Did he make many speeches in the House during the period he was in office? A. Yes, sir, he made a considerable number of speeches.

Q. Do you recall at any time reading an article in "The Evening Star" newspaper in Washington published on May 27, criticizing the Maryland State Savings and Loan Associations? A. Yes, sir, I definitely do.

Q. And after reading it, what did you do? A. It was published, as I recall, on Friday, May 27, and the first of the following week I did consult the Congressman about it because I considered it to be a smear on an important segment of Maryland economy, the savings and loan industry.

Q. Now, did he bring it to your attention or did you bring it to his attention? A. I carried the "Evening Star" into his office and went over it with him. I brought it to his attention.

Q. Now, do you know about when you did that? A. I would say—well, the speech, the article in the paper by Mr. Hadley, Don Hadley, as I recall the name, in the "Evening Star" was made on May 27 and I presume about June 1 or June 2nd, I did call it to his attention.

Q. About this time did you meet a Mr. Heflin? A. Yes.

Q. Under what circumstances? A. He came to the office with a Mr. William Robinson to visit the Congressman.

Q. Tell the jury what happened, as you recall it. A. Mr. Robinson and Mr. Heflin went in for a short visit with the Congressman. The Congressman came out with Mr. Robinson and Mr. Heflin and he introduced Mr. Heflin to me and he told Mr. Heflin in my presence that "Mr. Buarque generally takes care of these matters. He does my writing and if Mr. Heflin wishes to cooperate with you, why, the discussion would be carried further from this office out here, the outer office."

Q. How was Mr. Heflin introduced to you? A. As a public relations man for independent savings and loan associations.

Q. What, if anything, did Mr. Heflin say to you with respect to this article that had been published in the Star? A. Mr. Heflin felt that there should be some reply made to this article that appeared in the Washington **Star and** I told him that I had already conferred with the Congressman in this matter and he had told me to proceed to write something, and he would examine it.

Q. Now, thereafter, did Mr. Heflin—strike that.
Thereafter, did you do anything in connection with the drafting of a speech answering that article? A. Yes, I did, sir.

Q. What did you do? A. I wrote the speech, in the main. He did furnish me, Mr. Heflin, with some statistics and some facts, but in the main it was my speech.

Q. Mr. Heflin, you say, did send you some material for the speech? A. Yes.

Q. Do you recall a speech by Congressman Cecil King of California? A. Yes, I definitely do.

Q. Who brought that to your attention? A. He sent me a reprint but I had read it previous to that in the Congressional Record as part of my duties was to read the Congressional Record daily, sir. So, I had the Record. He was sending me something I had access to anyhow.

Q. Who do you mean? A. Mr. Heflin sent me a copy of Congressman King's speech.

Q. Do you recall a speech by Congressman Utt of California? A. Yes, I do, sir. He also sent me a reprint of his speech and again I had previous access to the Congressional Record and had read the same.

Q. When you say "he"— A. Mr. Heflin, sir.

Q. Mr. Heflin called it to your attention, too? A. Yes, sir.

Q. I show you what purports to be the Congressional Record of June 30, 1960 and ask you if, on page 1484 there appears the speech on savings and loan associations which was given by Mr. Johnson on that day or delivered to the Speaker for publication in the Congressional Record which has the same effect? A. This is the speech. It was incorporated in the Record, sir.

Q. As it was in the Congressional Record? A. Yes.

(Mr. Doub) I would like to offer this, Your Honor.

(The Clerk) Into evidence.

(Mr. Doub) Yes.

(The Clerk) Defendant Johnson's exhibit 11 marked in evidence.

(Defendant Johnson exhibit 11 received in evidence.)

(Mr. Doub) This is the Congressional Record of June 30, 1960 and this is precisely as the speech appears in the Record on that day.

By Mr. Doub:

Q. I show you a document headed "Congressional Record—May 19, 1960," and ask you what that is? A. That is the reprint of a speech made by Honorable Cecil R. King, captioned "False Confidence in Federal Savings and Loan Insurance Corporation."

Q. Is that the speech to which you have just referred of Congressman King? A. Yes, sir.

(Mr. Doub) I would like to offer it in evidence, Your Honor.

(Mr. Ungar) What is the date of that?

(Mr. Doub) May 19, 1960.

(The Clerk) Defendant Johnson's exhibit 12 marked in evidence.

(Defendant Johnson's exhibit 12 marked in evidence.)

By Mr. Doub:

Q. I show you a photostatic copy of what purports to be a speech of Congressman James B. Utt, in the Congressional Record of April 28, 1960, and ask you if that is the copy of the speech which you testified you saw?

A. This is a copy of the speech by the Honorable James B. Utt of California, captioned "Activities of the Home Loan Bank Board". I read it previously in the Congressional Record. Thank you, sir.

Q. You were referring to defendant Johnson's exhibit No. — A. Yes, I was, sir.

(Mr. Doub) I do not believe I have offered it now.

(The Clerk) Defendant Johnson exhibit 13 marked in evidence.

(Defendant Johnson exhibit 13 marked in evidence.)

By Mr. Doub:

Q. The speech of Cecil King, Defendant Johnson exhibit 12 was made May 19, 1960. That is six weeks before Johnson made his speech? A. Yes.

Q. And the speech of Congressman Utt was made in April? A. Yes.

Q. Several months before Mr. Johnsons' speech? A. Yes.

(Mr. Doub) Now, Your Honor, I am fortunate in having my mouth piece here who will now read these speeches to the jury.

(Mr. Klages) I will read these in chronological order. The first speech is the speech relating to activities of the Home Loan Bank Board, entitled "Extension of Remarks of Honorable James B. Utt of California, in the House of Representatives Thursday April 28, 1960.

"Mr. Utt: Mr. Speaker, a few weeks ago in my Washington report to my constituents I discussed the invisible

and faceless bureaucracy operating through boards, bureaus and commissions so that our citizens are governed by people they have never seen, never voted for, cannot recall through any process of law, and who administers more administrative law than statute law.

"Last week this was brought home most forcibly by the arbitrary, capricious, conspiratorial and unwarranted seizure of the Long Beach Federal Savings and Loan Association by the Home Loan Bank Board under the guise of an 'emergency.' However, in making their announcement of this sudden and unwarranted move, they cited a list of allegations which they said had been in existence since 1947, 1948 and 1949. If these grounds existed 12 years ago, it was the duty of the Home Loan Bank Board to make its move at that time rather than to wait until this savings and loan was in the process of converting from a Federal to a State charter.

"The Home Loan Bank Board made false and libelous statements about the management and caused a run on the association. If any citizen of the United States made such allegations causing a run on a banking or a lending institution, he would find himself in the toils of the law, and would be prosecuted. This seizure is apt to cause a great financial loss to the depositors who are the shareholders of this association, of the surpluses which this association had built up.

"It is a conspiratorial because the Home Loan Bank Board discharged the personnel of the association and installed many personnel of competing institutions in Southern California. The Home Loan Bank Board agent forced the delivery to him of $22 million in cash and government bonds and posted no more than a $1 million fidelity bond, when the bond should have been equal in amount to the cash and the Government bonds delivered to him.

"I have joined with several other members of Congress in Southern California in asking for a complete and im-

mediate investigation of the activities of the members of the Home Loan Bank Board, its employees and agents, in order to protect the depositors of the Long Beach Federal Savings and Loan Association."

"Association" was added by me.

(Mr. Doub) I think that gives enough of the character of that speech so I would suggest that Mr. Klages pass to that of Mr. King.

Mr. Klages: This, ladies and gentlemen, is from the Congressional Record, Washington, Thursday May 19, 1960, House of Representatives, entitled "False Confidence in Federal Savings and Loan Insurance Corporation. Remarks of Honorable Cecil R. King, of California in the House of Representatives, Thursday, May 19, 1960.

"Mr. King of California. Mr. Speaker, the time has come when we must face the fact that the experiment of insuring the public's savings, through the Federal Savings and Loan Insurance Corporation has proven a failure under the present management. The Federal Savings and Loan Insurance Corporation is riding on the coat tail of Government to give the public confidence, a false confidence, under its present management.

"Over its 25 years of operation, the Federal Savings and Loan Insurance Corporation has only about $350 million reserves to insure over $50 billion of savings. Of this $305 million, the Insurance Corporation has committed over 25 per cent to cover a false emergency created by its own unwarranted acts, leaving three quarters of its assets to protect the remaining nearly 4,000 savings and loan associations. Its own reserves at the most are less than three quarters of 1 per cent of the amounts insured.

"A select committee of Congress in a prior investigation of the Federal Insurance Corporation, stated:

'The action here complained of was not only a disservice to the Government but a greater disservice to the people for the protection of whose rights and affairs our gov-

ernment exists. Should the time come when our government is incapable of discharging that fundamental function, it must cease to exist in the form and for the purpose for which the government is identified. The necessity for unquestioned rectitude of purpose, and sound, just and impartial administration of government endeavor is paramount.'

"Over its years of operation, there has been a continuous pressure and grasping for more and more power from this agency. Its ultimate aim appears to be to seize and confiscate the peoples' wealth, under police powers, without the right of the aggrieved to redress. This bureaucratic insurance agency, the Federal Savings and Loan Insurance Corporation, claims it is above and beyond the courts, it is a law unto itself.

"My esteemed colleague, the gentleman from California (Mr. Utt) Republican, in the April 28, 1960 issue of the Congressional Record, reported there is 'the invisible and faceless bureaucracy operating through boards, bureaus and commissions, so that our citizens are governed by people they have never seen, never voted for, cannot recall through any process of law, and who administer more administrative law than statute law.' Mr. Utt's statement seems to fit the operations of the Federal Savings and Loan Insurance Corporation.

"Two major congressional investigations have attempted to ferret out its fallacies. The Special Select Committee of the House of Representatives, headed by the gentleman from Virginia, the Honorable Howard Smith, found the acts of the Home Loan Bank Board, the alter ego of the Federal Savings and Loan Insurance Corporation, to be vindictive, capricious, and a disservice to the public because of its acts of seizing the Long Beach Federal Savings and Loan Association in 1946, as a retaliatory plenary penalty.

"The Long Beach Association shareholders sued for the recovery of their property. The Insurance Corpora-

tion evaded its liabilities by asserting it was beyond the law. It asserted that there was no designated agent upon whom valid service could be made, that it could pick and choose at its own whims which claims it would accept or reject.

"By 1949 the shareholders were vigorously pressing to procure an accounting for multimillion dollars of property seized by this Government bureau and never returned. The Home Loan Bank Board and its alter ego, Savings and Loan Insurance Corporation, responded by attempting to again re-seize the Long Beach Association for liquidation. A special committee of the Government Operations Committee of the House of Representatives under the chairmanship of the Honorable Chet Holifield, commenced investigation of the Savings and Loan Insurance Corporation and its various alter egos.

"A Deputy Attorney General was placed on the witness stand before this second congressional committee in 1951 and admitted that the so-called charges against the association management upon which the attempted liquidation was to be based were for 'horse-trading purposes.' An admission that spurious charges were made against the association management to trade the association and its shareholders out of their claim against the Federal Savings and Loan Insurance Corporation. Spurious charges to blackmail our citizens out of multi-millions of dollars of their wrongfully seized and confiscated property.

"Congress, following such investigations, enacted laws to prevent over again such disaster happening to our citizens. The Housing Act of 1954 was to be a bill of rights for savings and loan associations. Such 1954 act set up an orderly judicial procedure to settle bona fide disputes between supervisory authority and the savings associations, and established strict procedure to force the Federal Savings and Loan Insurance Corporation to designate an agent upon whom court process could be served. The Federal Savings and Loan Insurance Corporation re-

sponded by first attempting to divorce itself from any supervisory control, but Congress refused.

"The Federal Savings and Loan Insurance Corporation then responded by attempting to gain summary police powers over all insured associations, both State and Federal, including the rights to control who shall manage each association. Congress again refused.

"The Federal Savings and Loan Insurance Corporation and its alter ego, the Federal Home Loan Bank Board, then responded by adopting rules and regulations giving itself exclusive police and seizure powers over all Federal savings and loan associations. These self-adopted, self-serving Federal regulations proposed to deny the courts the right to intervene while the agents of the Federal Savings and Loan Insurance Corporation, its alter ego, the Federal Home Loan Bank Board, seize, refuse receipts for negotiable assets, confiscate private property, misrepresent and deceive the public and intimidate our citizens out of their savings.

"Mr. Speaker, my investigation shows the latest seizure of the Long Beach Federal Savings and Loan Association on April 22, 1960, has proved the Federal Savings and Loan Insurance Corporation and its alter ego, the Federal Home Loan Bank Board, to be guilty of these vicious acts of dishonesty and misconduct.

"The Federal Home Loan Bank Board adopted a resolution declaring a so-called emergency."

(Mr. Doub) Your Honor, I think that is sufficient.

(The Clerk) Defendant Johnson exhibit 14 marked for identification.

(Defendant Johnson exhibit 14 marked for identification.)

By Mr. Doub:

Q. Mr. Buarque, I show you defendant Johnson exhibit 14 consisting of ten yellow pages written in pencil and I

ask you what that is. A. It is a rough draft of the speech for the Congressional Record June 30, 1960.

Q. Who prepared that? A. I did that. It is in my handwriting.

Q. Will you look through it and see if its all your handwriting? A. Yes it is.

Q. This is a draft of the speech which is in your handwriting and which you wrote? A. Yes, sir.

Q. Now, I notice some notations on the side, on the margin, for example, on the first page there is a notation in the same handwriting. Suppose you read it. A. "Mr. H. would forward material by Utt and King and suggested several pointers as to outline in general of the speech." Which he did.

Q. That is a notation of the conversation you had with Mr. Heflin? A. On the telephone, yes, sir.

Q. Now, will you read the next notation on the margin on the first page? A. "P.R. for ind. S & L Assoc." I abbreviated here, which I always did. This is how he was introduced to me. That appears on the side of my rough draft.

Q. Read the rest of the notation. A. The rest of the way down?

Q. On the margin. A. "Telephone conversation with Hef. Stated the number of ind. savings and loan associations. Speech must be made—

(Mr. Tydings) What was the last thing?

(The Witness) "Telephone conversation with Hef. Stated the number of ind. savings and loan associations in the State of Maryland."

And I have circled down here "(427)".

"Speech must be made applicable to our State" is what I have here.

By Mr. Doub:

Q. Will you state the reference to the number of Maryland savings and loan associations? A. 427, sir.

Q. And you obtained that from Mr. Heflin? A. Yes, sir.

Q. Did you obtain from Mr. Heflin anything as to the amount of assets, total assets in the aggregate of Maryland savings and loan associations? A. Yes, I did. I had put down here $300 million in my speech, and he said I was incorrect, it was $1.3 million in our conversation, and that is what I incorporated in the speech, 1.3 million.

Q. As a matter of fact, you were right the first time? A. Yes, sir.

(The Clerk) That has only been marked for identification.

(Mr. Doub) I am sorry. I would like to offer Defendant Johnson's Exhibit No. 14.

(The Clerk) Defendant Johnson's Exhibit No. 14 previously marked for identification now marked in evidence.

(Defendant Johnson's Exhibit No. 14 was received in evidence.)

By Mr. Doub:

Q. Mr. Buarque, did Mr. Heflin participate with you in the drafting or redrafting of that speech? A. Physically he did not. We had conversations on the telephone, but physically he had nothing to do with my writing of that rough draft there at all.

Q. Did he ever submit to you any drafts of the speech? A. None, whatever.

Q. Did you show it to him when it was in final form and Mr. Johnson was ready to deliver it? A. I read it to him on the phone.

Q. You read it to Mr. Heflin on the telephone? A. Yes, I did.

Q. Now, before and during the time that you drafted that speech did you receive any material for it from Mr. Robinson? A. No.

Q. Did you receive any drafts of a speech prepared by Mr. Robinson? A. No, I did not.

Q. Did you receive any material from Mr. Edlin? A. No.

Q. Did you receive any draft of the speech from Mr. Edlin? A. No.

Q. Did you receive any material from Mr. Edlin or Mr. Robinson in connection with the speech? A. No, I did not.

Q. Did you have any correspondence with Mr. Edlin or Mr. Robinson with respect to the preparation of that speech? A. No, sir.

Q. Did you discuss it with Mr. Edlin or Mr. Robinson? A. I did not.

Q. Now, after you prepared your final draft of the speech, you submitted it I suppose to Mr. Johnson?

A. Yes, sir.

Q. And did he make any changes in it or not? A. I had gone over previously with him, sir, this speech, and some outlines of a rough draft speech in which I belabored in my own way of writing the Home Loan Bank and he wanted that stricken and I did, and in the final copy of the rough draft I have here it was deleted.

Q. He deleted or had you delete certain parts of it? A. Yes.

Q. Do you recall what they were? A. It was with respect to the Federal Home Loan Bank which I considered the alter ego for the SLIC.

Q. What is that? A. Federal Savings and Loan Insurance Corporation. He felt that my writing was rather

strong and too suggestive and asked me to delete it and I did.

Q. You mean too critical? A. Yes.

Q. Who was present when you submitted your final draft of the speech to Mr. Johnson? A. He and I alone.

Q. Now, at that time or at any earlier meeting with him, did you have any discussion with him as to why he was interested in making this speech and, if so, what was said?

A. It was sort of a three-step thought that he had as well as a three step thought that I had.

First, we considered it to be a smear against the savings and loan industry of the State of Maryland.

Q. When you say that, what do you mean? A. The article that appeared in The Evening Star which was captioned "Savings and Loans Urged to Warn public of Maryland Phonies," and that was the caption. He considered this to be, or I did and he though in similar vein, that this was a smear against the entire Maryland Savings and Loan industry.

Secondly, the Congressman also felt that this might be an issue which he could grasp because he had some ambitions for 1964 and he was looking for a statewide issue and this seemed to have pertinent factors pointing that way.

Q. Was there any discussion of the 1960 campaign? A. In the 1960 campaign he thought it would be a good thing because here was something in our discussion lampooning a very important segment of the Maryland economy and he thought this would be very important to him in the 1960 election.

Q. Now, does that speech contain any reference by name or otherwise to First Continental Savings and Loan Association? A. No, it does not.

Q. Does it contain any reference to First Colony Savings and Loan Association? A. No, it does not.

Q. Does it contain any reference to any named association? A. No, it does not.

Q. When did you first meet Mr. Edlin and Mr. Robinson? A. To the best of my recollection, it was the latter part of March, 1960.

Q. In what connection did you meet him? A. They were there with a group to discuss private financing for the Assateague bridge. That was their objective.

Q. Now, did you ever discuss that speech or the contents of that speech with Mr. Edlin? A. No, I did not.

Q. Did you discuss its contents at any time with Mr. Robinson? A. No, sir, I did not.

Q. I show you Government exhibit 54 which purports to be a draft of a speech dated May 2, 1960, and to have been attached to a letter from Mr. Robinson to Mr. Heflin dated May 3, 1960. I ask you when you first saw that draft of a speech by Mr. Robinson? A. I first saw this draft a few days ago when you showed it to me and asked me to compare it with the speech that was in the Congressional Record.

Q. Did Mr. Heflin ever show you that? A. No, the first time I ever saw this was when you showed it to me.

Q. Last week? A. Last week, sir.

Q. Now, at my request did you make a comparison of that draft of a speech with the speech which Congressman Johnson delivered? A. I did.

Q. And will you tell the jury whether there are sentences in Mr. Robinson's draft which are contained in Mr. Johnson's speech?

(Mr. Tydings) You mean verbatim, or the idea, or the thought?

(Mr. Doub) No, I mean verbatim.

(Mr. Tydings) There have been no representations it was verbatim.

By Mr. Doub:

Q. Go ahead. A. Repeat the question.

Q. In that draft of a speech by Mr. Robinson which you testified you never saw until last week, will you tell the jury to what extent you found it was comparable to the speech Mr. Johnson delivered? A. It is totally dissimilar and we would not even use such diatribe in Congress ourselves. I have read through it.

Q. I do not want that. A. I am sorry. No, it is totally dissimilar.

Q. Totally dissimilar. A. Yes, sir.

(Mr. Doub) If any members of the jury would like to look at it.

(The Court) If you want to read them both to the jury, you cannot wait until each member of the jury reads both of them. It will take all day. If you want to read them both to the jury, you may do so.

(Mr. Doub) No, Your Honor, I suggest they be permitted in the next recess to take them both with them.

(The Court) Mr. Williams objected to my allowing that to be done the last time I had suggested that some documents be taken.

(Mr. Williams) In fact, I did not object, Your Honor, on the specific documents. I wondered whether the practice was a good one on all documents but I certainly have no objection to this.

(Mr. Doub) I didn't object, Your Honor, when the Travelers checks went out with the jury.

(The Court) I wanted to be sure each defendant had an opportunity to object to what anyone does. The objection was made when I did it before and if the Government has no objection, the jury may take them out then.

By Mr. Doub:

Q. Mr. Buarque, after that speech was made by Congressman Johnson on June 30, 1960, did you receive a request for reprints from Mr. Heflin? A. Yes, I did.

Q. And did he telephone you or come to see you? A. He telephoned me and requested 10,000 reprints, sir.

Q. What did you reply to him? A. Well, I replied to him that Congressman—after discussing it with the Congressman, he would not bear the onus of responsibility as far as financing or the distribution of the reprints.

Q. Well, who did you say had to pay for them? A. I told him he would have to pay for them or someone else would. The Congressman would not do so.

Q. Was anything said in the course of that telephone conversation with Mr. Heflin about a caption? A. Yes, he asked if the caption could be changed and I did not see why not. When he read the caption to me that he wanted, after looking at the caption, and the Honorable Cecil King had used, I did not see anything wrong in using a different caption.

Q. And after you received that order for 10,000 prints, what did you do? A. I told Mrs. Kiernan to order the 10,000 and she did so. She signed the order for 10,000 reprints.

(Mr. Doub) I might say, Your Honor, this: The record of the Government Printing Office, which is in evidence is signed by Mrs. Kiernan as the person who ordered them from Mr. Johnson's office.

By Mr. Doub:

Q. Now, later, did you receive a second order? A. Yes, he called again and this time he wanted 40,000 reprints.

Q. What did you tell him? A. Well, I questioned him with respect to the volume of reprints. The number, although I know Congressmen like to get advertisements. I thought this was an unusually large number and he said, "Well, it is not too large" and suggested to me that Mr.

Cecil King's reprints had gone out in the number of some 50,000, so we ordered 40,000 more reprints.

Q. Now, did you see the check which is in evidence, paying for the reprints? A. Mrs. Kiernan handled the check and took it directly to the Congressman.

Q. Do you recall when that check came in and when it was presented to Mr. Johnson for his endorsement over to the printing office? A. That is correct, I remember it, yes, sir.

Q. You do remember it? A. Yes, sir.

Q. Were any of these reprints left at Congressman Johnson's office for office use? A. I requested some four to five hundred for our own personal use when the 10,000 order was made, and when they came in, I asked for four or five hundred reprints to be left for our files.

Q. Why? A. Well, I felt that perhaps we would have people writing in and I would want to send them copies of the reprints.

Q. The reprints which were left at your office and put in the file, were any of them underscored or marked? A. No, sir.

Q. They were not? A. No.

Q. Where were they kept in the office? A. In a file captioned "Savings and Loan Association." We had a file of that nature.

Q. Were any of them kept out on a table so visitors might have access to them? A. No, sir, we did not keep them out on any table.

Q. Did you see Mr. Heflin after that? A. After the 40,000?

Q. Yes. A. I did not see him any more that year, no.

Q. What response, who public reaction was there to Mr. Johnson's speech? A. We had considerable public

reaction to that speech. We had letters coming in as far away as Idaho and Texas and various other parts of the United States with respect to that speech.

Q. I show you some correspondence and ask you what it is. A. This first one here is a thermofax copy from the Idaho Savings and Loan Association from a Mr. Ernest Garrett who is the Assistant Vice President in which he requested one hundred copies of the speech from the Congressional Record.

Q. I notice a notation down there "150" in pencil, and what is that? A. The reason there is "150," down there, we sent approximately 150 copies of the reprints to this association in Idaho.

Q. And attached to that letter from the Idaho Savings and Loan Association I then notice there are other requests for copies of reprints of the speech, are there not? A. Yes.

Q. Were those requests complied with? A. Yes.

Q. Will you state the place of origin of request there; are there any others from outside of Maryland? A. Well, this is from Washington, D.C., sir. This is from a Mr. Stewart Goldsborough in Washington, D.C. and he wanted to use portions of the speech. He asked for permission to use certain excerpts from the speech, which was granted.

Q. Look through the rest of them. A. This is from Mr. Robert Mullen and he is from Alice, Texas and he was very interested in getting copies of the reprints because, in his letter to us, he thought there was a vendetta existing between Federal Savings and Loan and Independent Savings and Loan Associations.

Q. Where are the others from? A. This is from Mr. Marty Lefkoe, from the Research Department, Jessup and Lamont, New York City, New York and they wanted a copy of the speech as well. This is one from Mr. Robert J. Lamecki from Baltimore, Maryland and he wanted twenty copies and they were subsequently sent to him.

On his letter addressed to us there was a notation here which—well, it is not my writing but I had discussed this with Mrs. Kiernan. It is her notation of Mr. Heflin and his telephone number and she puts in shorthand there that our supply is exhausted and as soon as possible we have some more reprints which we had another 150 or 200 sent up to the office, and we got them out as they came in, as requests for them came in.

(Mr. Doub) I would like to offer these collectively, Your Honor.

(Mr. Tydings) Could we see them, Mr. Doub?

(Mr. Williams) I want to see them, too.

(The Court) Mr. Tydings, just read them for admissibility at this time.

(Mr. Tydings) We have no objection to their admissibility.

(The Court) If you haven't any, you will have an opportunity to look them over before the recess or before cross examination if you wish.

(Mr. Tydings) We have no objection to their admissibility.

(The Court) The only question is admissibility at this time.

Mr. Williams wanted to see them, I believe.

(Mr. Williams) I do not want to delay anything.

(The Court) If you want to see them, just on admissibility. You will have an opportunity to examine them also before cross examination.

(Mr. Williams) I just wanted to see them on the grounds of curiosity, Your Honor.

(The Clerk) Defendant Johnson's Exhibit 15 marked in evidence.

(Defendant Johnson Exhibit 15 marked in evidence.)

(The Court) Mark the whole group 15 and let the top one be A and let the others be marked B, C and so on, and to save time you can start reading the first one.

(Mr. Doub) That is the only one I intend to read.

(The Court) Why don't you read that and Mrs. Zielinski can mark the others later.

(The Clerk) Defendant Johnson's Exhibit 15 marked in evidence.

(Mr. Doub) This is a thermofax of a letter dated August 25, 1960, on the letterhead of Idaho Savings and Loan Association, Pocatello, Idaho, addressed to Honorable Thomas F. Johnson, House of Representatives, Washington, D.C.,

"Dear Sir:

"We wish to commend you for your bold attack on the smear of the savings and loan industry by the Washington Star and by the Federal Savings and Loan Insurance Corporation. We are very grateful for honorable men like yourselves and Mr. Utt of California who are instrumental in seeing that the public is not duped by the false and misleading and illegal advertising of the so-called 'Federally insured savings and loan associations.'

"While your remarks primarily pointed to Maryland Associations, we consider you a champion of all independent state-chartered associations.

"We appreciate very much your forthright declarations in behalf of the independent associations.

"We would appreciate it very much if you could send us one hundred reprints of your remarks in the Congressional Record of the 86th Congress, Second Session, dated June 30, 1960.

"Thank you again and keep up the good work.

"Very truly yours,

"Idaho Savings and Loan Association

"By Ernest A. Garrett,

"Assistant Vice President."

(The Clerk) Johnson Exhibit 15-A through F marked in evidence.

(Defendant Johnson Exhibits 15-A through 15-F received in evidence.)

By Mr. Doub:

Q. Do you recall, Mr. Buarque, a fund-raising campaign luncheon at the Lord Baltimore Hotel for Congressman Johnson in July, 1960? A. Yes, I do.

Q. Were you present? A. I was.

Q. What was the purpose of that luncheon? A. To raise funds for the Congressional campaign in 1960, the fall of 1960.

Q. And what was the date of the luncheon, do you remember? A. You just told me the 19th of July and I remembered anyway, because I was there.

Q. Do you know whether Mr. Robinson or Mr. Edlin were there? A. I do not recall that Mr. Edlin was there. Mr. Robinson may have been but I do not recall either one being there. He may have been there. I do not know.

Q. Was this luncheon well attended? A. Yes.

* * * * * *

[Tr. 2687-2695]:

CROSS EXAMINATION

By Mr. Williams:

Q. Do you remember telling the grand jury at that time that you first met Mr. Robinson and Mr. Edlin, as you did

today, in the spring of 1960, in connection with the bridge, but that neither Mr. Robinson nor Mr. Edlin were present in Congressman Johnson's office during the period prior to the speech of Congressman Johnson on June 30, 1960? A. I don't recall that, sir.

Q. Do you remember this question? Do you remember whether you were asked this question, on pages 13, 14 and 15 of the grand jury transcript:

"Question: When did you first meet Mr. William L. Robinson?

"Answer: I met Mr. Robinson and even Mr. Edlin, it was either the latter part of April or the latter part of March or the first part of April 1960. They came to the office with an attorney in Washington by the name of Marshall Diggs and another one, Taylor Bryant, and I believe it was in connection with the Assateague Bridge. He told the Congressman he was acting as an agent for the Assateague group. He came up in the District and worked with the Congressman on those matters. They were trying to get this group to underwrite a bond of some $6.1 million, as I recall it. I don't know what happened. Anyway, it didn't occur, but that is the first time I met either one of them. It was in connection with the Assateague Bridge plan.

"Question: Were they friends of Congressman Johnson's or just close acquaintances?

"Answer: Who was that?

"Question: Edlin and Robinson.

"Answer: That was the first time I had ever seen them.

"Question: How about Congressman Johnson as far as you know?

"Answer: I don't know. That is the first time I met them.

"Question: Did you introduce them to Congressman Johnson?

"Answer: No, they introduced themselves. One said, 'I am Mr. Kenneth Edlin,' and the other one said, 'I am Bill Robinson, from Miami, Florida.

"Question: Did they both go into the office?

"Answer: They were in with Mr. Marshall Diggs, and Mr. Bryant and another one. I don't know what his name was.

"Question: They were discussing the Assateague Bridge?

"Answer: That is correct.

"Question: When was the next time they came to your office? Did they come to your office prior to the Congressman's speech?

"Answer: No, I don't recall them, seeing them in the office prior to the speech."

Do you remember being asked that question and giving that answer to the grand jury on April 25, 1962, Mr. Buarque? A. I probably was if you say so, counsellor.

Q. What is your recollection? Do you recall giving that answer? A. I recall the testimony I made this morning, that that was the first time I had met them was over the Assateague Bridge. It was.

Q. Now, you produced a draft, Mr. Buarque, which was marked Defendant Johnson's Exhibit 14. Is this the only draft of the speech that was prepared? A. By me.

Q. Was this the only draft of the speech prepared by anyone? A. I don't know about anyone else. This is what I prepared, sir.

Q. You only prepared one draft? A. I prepared several initial drafts. That was the final composition, the final form that took place.

Q. This was the last draft? A. Yes, that was the final form that took place.

Q. This Johnson Exhibit 14 contains two holes at the top. Did you extract it from a file before you produced it? A. I have a large file of rough drafts, sir. It was taken out and given to Mr. Doub.

Q. You gave him all of those prior drafts? A. I have a lot of drafts.

Q. And there were prior drafts of this speech that haven't been produced here today? A. No, there wasn't, because they were more or less scratched out on yellow foolscrap paper. It wasn't in continuity at all.

Q. And you threw them out? A. Oh, yes.

Q. That is the only draft? A. That is a rough draft of the final speech, yes, sir.

Q. Now, Mr. Buarque, in connection with this speech, how many times did you speak to Mr. Heflin over the telephone about it? A. Over the telephone maybe three times.

Q. Three times. And how many times did Mr. Heflin come to your office to discuss it? A. Two or three times.

Q. Two or three visits in the office and two or three times over the telephone? A. Yes, that is correct.

Q. And did he submit you a draft? A. Well, if he did, I didn't see it.

Q. Wasn't he working on the speech first and then you worked along with him? A. No.

Q. I think you mentioned a Mrs. Frances Kiernan in your direct testimony. Did you see her when she came up here to testify on April 10, 1963? A. I saw her when she entered the door, yes, sir.

Q. Do you recall ever telling Mrs. Kiernan at the time of the speech, "Mr. Heflin is working on the speech, and I am going to work on it with him"? A. Well, I consider

his work on it the furnishing me with certain statistics and facts, which is permissible. On the Hill all congressional assistants use facts and material from wherever they get it. He furnished these facts, and I incorporated them in the speech.

Q. Do you remember telling Mrs. Kiernan that Mr. Heflin is working on the speech, and I am going to work on it with him? A. No.

Q. Do you deny telling Mrs. Kiernan that? A. No, I don't deny telling her anything. I know I constructed the speech and he furnished me the facts, between the two of us. As you say, we made the speech, but as far as him furnishing me a draft, it simply isn't so.

Q. Did you ever give him a draft to take out of the office? A. I didn't give him any draft.

Q. Did he ever take a draft out of the office? A. If so, I do not know.

Q. You don't know? A. If he took one out, I do not know, I said, sir.

Q. Nobody else was making any drafts other than you? A. He furnished me with the facts. He gave me a list of facts he would like to see me incorporate in it, which I did.

Q. Did he give you a list of facts of things he would like incorporated in the speech before you made your first draft? A. No, he did not.

Q. He gave it to you as you were making the draft? A. That is correct.

Q. Now, can you tell us whether or not at the time the drafts were being made and before the speech was delivered it was contemplated that this speech would be reprinted and Mr. Heflin, after it was made, would then order copies of the reprints? A. I wasn't advised to that effect.

Q. Now, these notes that you made on the draft, you

made them while they were still a draft, didn't you? A. That is correct.

Q. And do you remember—let me read you this note in the lefthand margin of page 5:

"Mr. Hef. telephoned re caption for reprints and reference to King speech"?

A. Yes, he mentioned in one of the telephone calls that he would like to see the caption changed.

Q. Before the speech was delivered. A. But I didn't change it before it was delivered.

Q. He talked to you about reprints and the caption for reprints before the speech was delivered? A. Yes, he said he would like to see the caption changed, but we didn't change it at that time.

Q. You mean you were already discussing the caption for reprints at the time the speech was still in draft form and before it was delivered? A. I discussed this with him, and I told him I would take it up with the Congressman. We discussed it, and he told me he didn't care what we did.

Q. That was before the speech was delivered? A. The final speech was delivered on the floor. I discussed it with him. I hadn't yet adopted the caption.

Q. The question is: I will ask it again. The discussion with Mr. Heflin—answer this yes or no, please—the discussion with Mr. Heflin with respect to reprints and the caption for reprints occurred before the speech was delivered? A. Yes, because I thought they were unimportant. The caption was unimportant.

Q. Now, in the speech you say you make no reference to First Colony, but in the text of the speech you say, do you not, there are exactly three—I think that is the wording of the speech—exactly three institutions under indictment, but none tried. Is that right? A. That is correct.

Q. And you did some research into determining which associations were under indictment at the time of that speech? A. I read newspapers.

Q. Did you go back into newspapers? A. I read something in the newspapers about it, yes.

Q. Did you do that research yourself or did you have the research arm of the Congress help you with that? A. I did it myself because I get a daily newspaper.

Q. And you found then that there were exactly three institutions under indictment, is that right? A. Yes.

* * * * * *

[2711] (The Clerk) State your name.

(The Witness) Marshall R. Diggs.

(The Clerk) Take the stand, please.

DIRECT EXAMINATION

By Mr. Doub:

Q. Spell your last name, sir? A. D-i-g-g-s-.

Q. Mr. Diggs, where do you live? A. Washington, D. C.

Q. You are a lawyer? A. Yes.

Q. What government positions have you held in the past? A. Well, I was executive assistant to the Comptroller of the Currency, was First Deputy and Acting Comptroller of the Currency.

Q. During what period of time were you Acting Comptroller of the Currency? A. In 1938.

Q. Now, in 1960 were you head of a group which was promoting a privately owned bridge from the mainland to Assateague Island? A. I was Chairman of the Board of the Assateague Island Bridge Corporation which was trying to build a bridge across from the main land to the Island.

Q. Your company was interested in private financing for the construction of that bridge? A. Yes.

Q. Did you meet, in the course of your efforts to promote that bridge, Mr. Kenneth Edlin? A. Yes.

* * * * * *

[2713] Q. Now, did Mr. Johnson have any relationship to this group that was interested in this construction of this bridge? A. Yes, Mr. Johnson was the attorney for the Bridge Corporation along with other attorneys here in going before the Public Service Commission and the Securities and Exchange Commission.

Q. And, do you know whether he met Mr. Edlin and Mr. Robinson in connection with these negotiations? A. Well, I know that they were discussed and I assume he met with that. I do not know exactly how he met them but they were discussed with Mr. Johnson.

* * * * * *

[2716] By Mr. Doub:

Q. Now, after that, was there a later proposal with respect to a loan to the Bridge Company in June or July, 1960, Mr. Diggs? A. There was a later proposal made by Mr. Edlin.

Q. All right. And was that proposal accepted or rejected? A. It was rejected.

Q. It was rejected and that was a proposal for a substantial loan for the construction of the bridge? A. Yes.

Q. Which was made to your bridge company? A. It was while I was away.

Q. So the final negotiations for a loan with Mr. Edlin or the institutions he represented were not concluded until July of 1960? A. Sometime after July.

(The Court) He said no, the end of the proposal was made while he was away. Mr. Tydings will stipulate that with you and you can save time. I do not see how this witness knows.

(Mr. Tydings) If Mr. Doub will represent to us that that is the fact.

[2717] (Mr. Doub) I do not represent anything. I am trying to find out from the witness. Were there any renewed negotiations after July of 1960?

(The Witness) I think they were finally turned down in August while I was away.

By Mr. Doub:

Q. In August? I see. A. August of 1960.

Q. Now, I show you a letter on your letterhead and ask you what that is? A. This is a letter written the 26th of July to Mr. Johnson, telling him "I am going to leave for London and that I have asked Mr. Edlin to submit his proposal to the Board in writing."

Q. So apparently, his proposal was made after the date of that letter? A. Yes.

* * * * * *

[2719] By Mr. Doub:

Q. In connection with this Assateague bridge project, do you recall having a luncheon in May of 1960 at the Congressional Hotel with Mr. Johnson and Mr. Edlin and, I believe there was also there, Mr. Rains and Mr. Heflin; do you recall any such luncheon? A. Well, I think that there was a lunch at some time. When it was, I do not know. Sometime in the spring before I went away.

Q. Do you recall whether it was at the Congressional Hotel? A. Yes.

Q. Do you recall that Mr. Johnson was there? A. My recollection is that he was there.

Q. How about Mr. Edlin? A. He was there, my recollection is.

Q. And then were there any strangers there, too, strangers to you, Mr. Diggs? A. Mr. Heflin was there.

Q. Mr. Heflin? A. I do not know who else. I just remember Mr. Edlin; Mr. Johnson and Mr. Heflin.

Q. Do you recall what was said at that meeting by anyone? [2720] A. Well, we were discussing the financing of the bridge. That is what I went there for, to discuss, because I was interested in trying to get this bridge built, and that was the purpose of the luncheon as I remember it.

Q. Well, how was Mr. Heflin introduced to you? A. Well, I knew Mr. Heflin because he had been—he was a friend of Mr. Daly's. I had met him in the office there with Mr. Daly so I knew him before I went to the luncheon.

• • • • • •

(Vol. 24 [2734])

(The Jury is absent.)

(At the Bench.)

(Mr. Doub) Your Honor, counsel for the other defendants have prevailed upon me to withdraw my request to read the grand jury testimony of Mr. Buarque to the jury in full. I might say it is not more than a re-hash of what he has already said.

[2735] (The Court) I do not have to tell the jury anything.

(Mr. Doub) We will go ahead with the redirect if there is any for Mr. Buarque.

(Mr. Tydings) The Court has to give the jury an explanation of why it is not going in and Mr. Doub can state it is withdrawn.

(The Court) You may do it on the jury. You made this play before the jury and I think these are not the same gestures but I think you must say you withdraw your request. It ought not be on the government. Say you withdraw your request that it be read.

(Mr. Doub) If we just go forward with the redirect, it seems to me that is all.

(Mr. Tydings) No, no.

(The Court) I will say that Mr. Doub has withdrawn his request and let it go at that. Just as simple as that.

(Mr. Genn) Just for the record, Your Honor, we want it clear that these are things we did not know about and we should not be left with the [2736] opprobrium of what other counsel have done.

(The Court) Mr. Doub has withdrawn request that it be read.

(Mr. Genn) In other words, the jury has been presented with the fact of the offer.

(The Court) You are being paid to represent your client and it is not for me to represent or to try to do anything except to hold an even balance. If Mr. Doub has cast opprobrium or created something that made you object or made Mr. Williams object. As the one that objected first I do not know how I can stop it.

* * * * * *

[2741] (The Court) Members of the jury, Mr. Doub has withdrawn his request that the entire testimony of Mr. Buarque before the Grand Jury be read to you. Therefore, we can proceed with his cross examination. Do you have any cross examination of Mr. Buarque, Mr. Williams?

(Mr. Williams) I do not.

Thereupon

MANUEL BUARQUE

a witness, having been previously sworn, resumed the witness stand and was examined further as follows:

(The Court) Do you have any questions, Mr. Genn?

(Mr. Genn) I do not.

* * * * * *

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[Tr. 2883-2899]

RUDOLF A. CARRICO

DIRECT EXAMINATION

By Mr. Doub:

Q. Mr. Carrico, where do you live? A. Bryantown, Charles County, Maryland.

Q. And you are a practicing lawyer, I believe? A. At La Plata, Charles County.

Q. Your office is in La Plata? A. Yes, sir.

Q. And that is the county seat of Charles County? A. Charles County, yes, sir.

Q. Now, Mr. Carrico, do you recall doing any legal work in association with Mr. Johnson in early 1961? A. Yes, I do.

Q. What did that case relate to? A. Foreclosure of a mortgage from D. G. & R. to Albert Ernest and assigned by Albert Ernest to the Charles County Land Company, and Mr. Johnson asked me if I would be interested in being associated with him to foreclose the mortgage.

Q. Have you lost your diary for the year 1961? A. Well, it is misplaced, yes, sir.

Q. In other words, you are not able to give the exact dates based upon a diary, then? A. I can give the date that we started the foreclosure proceedings.

Q. Well, now, before that, do you recall when your discussions with Mr. Johnson began about this mortgage foreclosure? A. The only thing I can tell you is some time prior to June 15, 1961, Congressman Johnson called me presumably from Washington and asked if I would be

interested in handling the foreclosure of a mortgage and I asked him what the mortgage was and what land it involved.

Q. What land did it involve? A. The Linda City property, some 7,000—close to 8,000 acres, in the 6th and 8th Districts of Charles County, near Waldorf.

Q. Now, what did Mr. Johnson tell you was the principal amount of the mortgage? A. At that time I do not believe he stated, that is, on the telephone, the principal amount of the mortgage. However, I did tell him that we would have to have a statement of the debt and Mr. Johnson said "Yes, I know that and I will see that you get that."

Q. Now, what was the amount of that mortgage? A. Close to $6 million. I do not have the statement with me. I think you have it.

(Mr. Tydings) I think it is in evidence, Your Honor.

(Mr. Doub) There is no dispute about that.

By Mr. Doub:

Q. Now, did Mr. Johnson tell you where you should obtain the Desser and Garfield original mortgage? A. Yes, sir, he told me that the mortgage was in the office of Mr. F. De Sales Mudd, a local attorney in La Plata. He stated that he had asked Mr. Mudd to handle it for him, handle the foreclosure proceedings but Mr. Mudd had told him that he had been retained by Desser & Garfield, and therefore, there was a conflict of interest and he just could not handle it. So, at that time when he said that, I said, "Well, Tom,"—I call him "Tom," because I have known him for a number of year, "I represented Desser & Garfield one time before the Sanitary Commission, so I do not know whether I can handle it or not," so we discussed that back and forth and he decided with me that he did not feel it would be unethical or any conflict of interest.

However, in order to satisfy my mind that there would be no conflict of interest or any bad ethics in it, why, I went over to see Judge Digges, who is the Judge of our

Circuit Court, discussed it with him and he could see no conflict because I was not retained at that time by Desser & Garfield, and was retained only for the specific purpose to appear before the Sanitary Commission.

Q. Do you recall any conversation with Mr. Johnson with respect to the standard and usual and customary fees for the foreclosure of a mortgage in Charles County? A. Yes, I do.

Q. What did you tell him? A. That the customary fee was six per cent of the sales price if the property was sold. However, if it was settled and did not go to sale, then it would be 3 per cent.

Q. Was it 6 per cent of the sales price, or 6 per cent of the principal amount of the mortgage? A. Well, it is kind of cutting fine teeth. We usually look upon it as sales price, whatever it brings, but you also act based on the affidavit of indebtedness which, in this instance would be the principal amount of the mortgage plus the interest.

Q. And, if a mortgage foreclosure was begun and then the sale was withdrawn? A. Then it is customary to get 3 per cent.

Q. Three per cent of what? A. Of the amount due. That is the principal plus the interest and that is not only customary but it is set forth, I think, in all of our mortgage forms that we use, and I do not remember whether it was in this one or not.

(The Court) You mean it is a matter of contract?

(The Witness) Yes, sir.

By Mr. Doub:

Q. Now, do you recall the provision in the mortgage as to this subject?

(The Court) He said he did not recall. Have you got it in evidence?

(Mr. Doub) What?

(The Court) The witness said he did not recall whether it was in this mortgage or not so the best evidence would be what the mortgage said.

Q. Now, did you then prepare a form of advertisement? A. Yes, I did.

By Mr. Doub:

Q. You drafted one? A. Yes, sir. I might tell you first, I sent my secretary over to Mr. Mudd's office in accordance with the instructions of Congressman Johnson to obtain the mortgage which my secretary did and then proceeded to prepare the advertisement.

Q. Was that mortgage assigned to you for foreclosure purposes? A.Yes, it was.

Q. And what was the next thing you did? A. I prepared the advertisement and I sent a copy of the advertisement that I prepared in accordance with my conversation at Congressman Johnson's request with him over the telephone, I sent it to him and he wanted to review the advertisement before it was put in the papers, and the two papers that he instructed me to put it in was the Washington Post and the Maryland Independent.

Q. Now, I show you a paper and ask you whether you prepared it and what it is. A. Yes, sir, this is a copy of the original draft for the advertisement for the sale of the property with which we are concerned, to wit, the Linda City property.

Q. That was your draft? A. That is a copy of my original draft.

Q. Now, what did you do with that draft after you prepared it? A. sent a copy to Congressman Johnson for his review.

By Mr. Doub:

Q. Did you testify that you sent the draft which you prepared of the advertisement to Mr. Johnson?

(The Court) He said it twice.

(Mr. Doub) All right.

(The Court) Once before you showed it to him, and once after you showed it to him.

By Mr. Doub:

Q. Did you send it with a covering letter? A. No letter.

Q. Why? A. The reason is because Congressman Johnson informed me when we talked over the telephone that he was anxious to get the advertisement in the papers and I told him because of my business and my busy schedule I was just going to draft an advertisement and just put it in the envelope and mail it to him, which I did.

Q. Now, after Mr. Johnson received that draft, what did he do? A. He telephoned me and suggested certain corrections.

Q. And will you explain the corrections which he suggested? A. One of them I know was a change of the date of advertisement. I had it on a Tuesday and he wanted it changed to Monday; also, at the heading of the advertisement, I had "Linda City" set out predominantly whereas Congressman Johnson suggested that we not put it at the top but "Sale of Valuable Real Estate known as Linda City" but to put it in the body.

Q. You made that change? A. Which we did do in the final draft. Also he suggested or recommended as to the terms of sale.

Q. What change did you make, sir, as to that pursuant to his direction? A. Well, if I could see my original and see the copy that I sent him and then the original, I could tell you. Then there was another change that he recommended in reference to tenancy and reservations.

(Mr. Doub) I would like to offer the original draft of

the advertisement as identified by the witness, Your Honor, in evidence.

(The Clerk) Defendant Johnson's Exhibit 31 marked in evidence.

(Defendant Johnson Exhibit 31 marked in evidence.)

By Mr. Doub:

Q. Now, I show you Johnson's Exhibit 31 being your original draft of that advertisement and ask you what other changes you made in it at the direction of Mr. Johnson? A. The one thing he suggested I remember was—I see this now,—was to put in there that the County and State taxes would be adjusted as of the date of sale. That is another thing. Then also he suggested another one. Can I refer to my files and tell you what they are?

Q. Yes, indeed. A. What the change was?

Q. Yes. A. I have to read from the publication in the paper. Toward the end of the advertisement and before the wording as to "all expenses of conveyances, including Government and State Revenue Stamps will be at the expense of the purchaser or purchasers." He suggested that we add this clause:

> "Any reservations, conditions, rights of tenants and so forth, if any, shall be announced on the day of sale."

Q. What changes did you make pursuant to his direction as to provision as to the terms of sale, if any? A. No, there was no change on that.

Q. No change on that? A. No, sir.

I do see one more change, too. I had in my original draft that the property is unimproved, and he suggested that be taken out.

Q. The date of the sale was also changed at his request, from July 11 to July 10? A. Yes.

Q. You testified the date of the advertisement. A. No, the date of the sale, sir.

Q. You are referring to the date of sale. Now, I show you another draft of advertisement and ask you if that is the final edition of the advertisement after you made the changes requested by Mr. Johnson? A. This is a copy of final draft.

Q. Your final draft? A. Yes. And another thing I should point out, I suppose we elected to do, and that is in the copy that I sent Congressman Johnson of the original draft, I had the total acreage up at the top, and he suggested that that be eliminated at the top, so that was elminated.

Q. Now, this second draft, is that in the form in which the published advertisements appeared in the Washington Post and the Maryland Independent? A. Yes, it is.

(Mr. Doub) I would like to offer this in evidence, Your Honor.

(The Clerk) Defendant Johnson Exhibit 32 marked in evidence.

(Defendant Johnson Exhibit 32 marked in evidence.)

By Mr. Doub:

Q. So that a comparison between these two drafts Johnson's Exhibits 31 and 32 would show the changes that you made pursuant to his request? A. That is correct.

Q. I show you what purports to be a copy of a letter to Congressman Johnson from you dated June 15, 1961 and ask you if that is your office copy of such letter? A. This is a copy of a letter which I wrote to Congressman Johnson.

Q. And that came from your files? A. Yes, sir, it came from my file.

(Mr. Doub) I offer it in evidence, If Your Honor please.

(The Clerk) Defendant Johnson Exhibit 33 marked in evidence.

(Defendant Johnson Exhibit 33 marked in evidence.)

By Mr. Doub:

Q. Would you read this to the jury, Mr. Carrico? A. Yes, sir.

"June 15, 1961.

"Honorable Thomas F. Johnson,
"House Office Building,
"Washington, D.C.

"Dear Tom:

"As requested, you will find enclosed this week's Maryland Independent which carries the advertisement for the foreclosure of the Linda City Property on page seven.

"Awaiting the statement of indebtedness in order that I might docket suit,

"Very sincerely yours,

"Rudolf A. Carrico."

By Mr. Doub:

Q. Now, pursuant to your request for the statement of account, I show you a paper and ask you if that is the statement of account which you filed in the proceedings? A. Yes, sir, this is a copy of the statement of account which was sent to me.

(Mr. Tydings) Mr. Doub, are you inferring that that was sent to the witness by Mr. Johnson or not? I think you ought to clear it up. If the witness knows where he got it, he should tell the jury. If he got it from Mr. Johnson, he should. If he does not know, he should tell what he knows.

(Mr. Doub) The last letter which you identified from yourself to Mr. Johnson requested a statement of account.

By Mr. Doub:

Q. Do you know whether— A. Statement of indebtedness.

Q. Yes. Do you know whether this statement of indebtedness was received by you from Mr. Johnson? A. I had also talked to Mr. Johnson over the telephone. There was no forwarding letter with this statement. My conclusion is that it came from Congressman Johnson.

Q. And what was the content of your telephone discussion with him? A. I informed him that we had to have an affidavit of the statement of the indebtedness due on the mortgage. And also in my letter of June 15, I told him that I was awaiting that statement, and then this statement came.

Q. All right.

(Mr. Doub) I would like to offer this, Your Honor.

(The Clerk) Defendant Johnson's Exhibit 34 marked in evidence.

(Defendant Johnson Exhibit 34 marked in evidence.)

(Mr. Tydings) The original statement of account is already in evidence, Government Exhibit 153.

(Mr. Doub) Well, I am sure there is no conflict.

Now, Johnson Exhibit 34 states:

(The Court) Do you wish to put it in again?

(Mr. Doub) I just want to read the first three sentences.

> "Principal amount due as of April 29, 1961, date of assignment to Charles County Land Company, Inc., of mortgage dated January 27, 1958 given by DG&R, Inc. and recorded among the land records of Charles County, Maryland in Liber 41, Folio 497 through 545—$5,905,252.52.
>
> "Interest from April 29, 1961 to July 10, 1961, said date being the date of sale as set forth in Notice of Sale heretofore published at the rate of 1 percent per annum—$11,648.66.

"Total amount due principal and interest as of July 10, 1961—$5,916,901.18, by George G. Woodman," with an affidavit on it.

By Mr. Doub:

Q. Now, Mr. Carrico, did there come a time when you notified Mr. Johnson what the premium on the required bond would be? A. Yes, sir.

Q. And what did you tell him? A. I told him that after review of the law, and as I understood the law, unless he ordered otherwise for costs, the bond had to be the amount of the indebtedness, which in this instance was six million dollars, and that the premium on the bond would be $24,000, unless the settlement was consummated within three months after the date of sale in which instance, it would be $12,000. And those figures I related to Congressman Johnson after I had gotten them from USF&G.

Q. Now, what did Mr. Johnson tell you in response to that? A. Johnson was astounded to hear that the bond would have to be that amount. He said "I just cannot see why we have to put up that amount." And he said, "I want you to go down and see Judge Digges, tell him that the Charles County Land Company, the holder of the mortgage, expects to bid on the property, and the probability is, unless it is settled before that, they will buy the property and see if you can't get the bond reduced."

So, I went over to see Judge Digges and talked to him about it and then thereafter petitioned the Court for a reduction of the bond from $6 million to $600,000. The $600,000 figure came from the 10 per cent deposit that would be required on the date of the sale in the event that all cash was not paid.

And I prepared that petition and Judge Digges signed an order which petition, copy of which petition and order I turned over to you today, and the order read that, as assignee I would put up a bond for $600,000 for the faithful performance of my duties and that, if the property were

sold, however, to some person, firm or corporation, other than the Charles County Land Company, Inc., then I would first have to post the bond to the amount of $6 million rather than $600,000.

(Mr. Doub) Now, if Your Honor please, I think it is clear we are going to take longer—

(The Court) Did you ever post a bond, or was it sold before?

(The Witness) I posted a bond for $600,000, sir.

(The Court) With whom?

(The Witness) U. S. F. & G.

* * * * * *

[Tr. 2904-2914]

DIRECT EXAMINATION (Resumed)

By Mr. Doub:

Q. At the close of the trial yesterday, Mr. Carrico, you testified that you reported to Mr. Johnson that a bond of $6 million would be required in connection with the foreclosure of the $6 million mortgage and that Mr. Johnson replied that a bond in a far less amount was all that was required. Now, after he told you that, did you go to see Judge Digges, the Circuit Judge of your county? A. Yes, sir, I did.

Q. And at that first meeting with Judge Digges on that matter what was his attitude?

(The Court) He has testified that Judge Digges cut the bond to $600,000.

By Mr. Doub:

Q. There were two meetings with Judge Digges? A. The first question arose as to whether he had the power to do that and then I delved into the law and, as a matter of fact—

Q. I just want to ask you now about the first meeting with Judge Digges. At that first meeting you had with him, did he feel the $6 million was— A. He was under the impression it had to be to the amount of the indebtedness due.

Q. Did you then communicate that to Mr. Johnson? A. I communicated that to Congressman Johnson.

Q. What position did Mr. Johnson take? A. Well, he felt that the judge could lower the bond and he indicated that to him it was just unreasonable under the circumstances to require such a bond so then I said to him, I said, "W[illegible] Tom, we have to look up some law on it and see if the [illegible]ge has the authority to lower the bond" and from there I looked up some law and determined that the Judge under the circumstances and all of the situation could, upon petition, in his discretion and judgment lower the bond.

Q. Now, that second talk you had on this subject with Mr. Johnson, will you state whether or not he took the strong position that the judge had the authority to lower the bond? A. He did do that. As a matter of fact, I am pretty certain of this. There came a time where Congressman Johnson was so set in his opinion that it could be lowered, that he telephoned me and asked me to come to Washington to talk further about it.

Q. Asked you to do what? A. Come up to his office in Washington.

Q. And did you go to his office in Washington? A. Yes, sir. And we discussed it further there and he said to me, he usually called me "Ruby" and I called him "Tom"—he said, "Ruby, you go back there and talk with Judge Digges and just tell him that such a big premium that we had to pay or the Charles County Land Company had to pay, rather, and attributable to the fact that the indications are now that if settlement is not made before foreclosure, that Charles County Land Company would bid it in and see if you can't get him to reduce the bond," which I did. You know the rest of it about the petition.

Q. Then you went to him the second time and I think you indicated yesterday that he did fix the bond in the amount of $600,000. A. $600,000, yes, sir, upon the conditions set forth as I related yesterday.

Q. Now, what would have been the premium on a $6 million bond?

(The Court) He testified to that yesterday, Mr. Doub. It is not necessary to have everything testified to twice.

Q. Now, the Court has some responsibility to move the case along. I want you to prove all of the facts that are important but they need not be in twice.

By Mr. Doub:

Q. Did you then file a $600,000 bond? A. Yes, sir.

Q. Did you receive a bill from U.S. F. & G. for the premium? A. I received a bill from them for $1200 provided, however, that in the event the entire matter was not consummated within three months from the date of the sale, it would be $2400.

Q. What was the bill for the bond premium before that adjustment, was it $2400—did I understand it was $2400? A. $1200.

Q. Sir? A. $1200, as I say, was the premium.

Q. Yes. A. But, in the event that the entire matter was not consummated within 90 days from the date of sale.

Q. Yes. A. Then it would be $2400.

Q. $2400? A. Yes, sir.

Q. Was it consummated within 90 days? A. It was consummated within 90 days.

Q. Well, now, later on near the final windup of this matter, will you state whether or not Mr. Johnson asked you to take up with the surety company an adjustment in the premium? A. Yes, there did come a time by way of tele-

phone that Congressman Johnson asked me to write a letter to the U.S. F. & G. Company and see if they could not still reduce the premium. That is, less than $1200 and I wrote a letter to them. However, they did not see fit to reduce it. I turned over to you yesterday the letter that I wrote to U.S. F. & G. and also the reply I received from U.S. F. & G. by way of Ed. L. Sanders, our local agent. The letter being directed to Mr. Sanders rather than to me.

Q. Now, have you any recollection of taking Mr. Johnson on one occasion to the Court House and introducing him to a lady in the Land Records Office at a time when he was interested in looking at certain plats there? A. I have some recollection, yes, sir, of one afternoon just about the time that the Court House was closing, and that would be at 4:30. As a matter of fact, in those days, I believe it was 4 o'clock. Now, it is 4:30 where Mr. Johnson came to my office and wanted to go over to the Court House and I went over there and they were just in the process of closing and, in spite of that, why, I asked one of the ladies there, I first introduced the Congressman and asked if he could see some record.

Q. Now, the date of this foreclosure sale was set for July 10, 1961, was it not? A. That is correct.

Q. Now, what happened that morning? A. A lot of things happened that morning.

Q. Before the scheduled sale? A. I say a lot of things happened that morning. As a matter of fact, I was at the time in a dither. I did not know whether to go or turn—which way to turn, because it had been indicated to me that the sale would not go through; yet that morning every indication was to the contrary. So, I got several telephone calls from Congressman Johnson.

Q. That morning? A. That morning.

Q. Now, at what time that day was the foreclosure sale scheduled? A. It was scheduled for 12 o'clock noon.

Q. Where? A. At the Court House door at La Plata.

Q. All right. Go ahead, Mr. Carrico; what happened that morning? A. And at 12 o'clock noon that day, my office is directly across from the Court House and, being a small county and knowing everybody, I knew a lot of people out there and so on, and I was looking out there and seen all these people around and so forth. I was concerned because I did not know at that time as to whether the sale was or was not going through. As a matter of fact—

Q. Had you heard whether there were negotiations in progress with Desser & Garfield? A. Yes, sir. Mr. Johnson had telephoned me several times that morning and said that he was in conference with the attorneys, as I recall, for the mortgagors in the hope of making the settlement.

Q. And the mortgagors were Desser & Garfield? A. Yes, sir, and there did come a time at approximately 12 o'clock noon—as a matter of fact, it was after 12 o'clock noon—that is the reason I was on pins and needles with the people over there waiting, and the auctioneer was over there, and so on, when Congressman Johnson telephoned me and said that settlement had been made with the mortgagors.

Q. And about what time was that, what time did that call come in? A. The sale was called off just about ten minutes after noon.

Q. After 12? A. Yes. I went over and there was about fifty people there. The auctioneer was there and I announced, as they asked me, that I had just received a telephone call to the effect that the settlement had been made and the sale would be off.

Q. In the earlier telephone conversations had there been requests from Mr. Johnson to hold the sale and postpone it as long as you could? A. I would not be positive if he said it in those words, but he gave every indication along those lines, anyway, when he was talking; yes, sir.

Q. Mr. Carrico, do you recall any discussions with Mr. Johnson during this period with respect to the legal problem as to whether there might be a so-called "merger of interests"? A. Yes, sir.

After settlement was indicated, why, in one of my telephone conversations with Congressman Johnson, I informed him, as a matter of fact, I think the day after I wrote him a letter, I told him that the next move was to petition the Court for the withdrawal of the mortgage and then, as I say, I think I wrote him a letter and told him that I enclosed a release for the proper offices of the Charles County Land Company to release the mortgage. After that move, I, as assignee, signed an assignment back to the Charles County Land Company. That was at the request of Congressman Johnson. When he said that, that that is what he wanted done, I said to him, I said, "Well, Congressman, that, to my mind, would be out of order because, if the property is going to be conveyed as I understand it, to the Charles County Land Company and fee simple title can be obtained by the Charles County Land Company, there would be a merger."

Congressman Johnson said to me, "Well, I do not know about that."

I said, "Well, I don't know for certain but," I said, "That is my opinion."

Then the Congressman said he would look into it.

Q. In other words, did you leave it that you would investigate that question or he would investigate it? A. No, Congressman Johnson said he would.

Q. And you did no further work on it? A. No further work on that. I mean, added to the merger question, no.

Q. Your fees and costs were paid on what date, if you recall? A. September 18.

Q. 1961? A. 1961.

Q. They were paid by a check on what company? A. I

do not know. I know that seems odd for me to say but I had had some trouble getting my money. At least it was delayed. Not trouble, exactly, but it was delayed and I had written Congressman Johnson, I think, three letters, telling him that these bills were due and enclosing him the bills, and so on, and when I got that check— because it was better than $3,000 due, and I was not concerned about my fee as much as I was about the premium on the bond, and other expenses, recognizing too, that if this premium was not paid by October 10, then it would double— when I got that check I was so glad to get it, I just put it right in the bank and I do not know who signed that check or who it came from.

Now, there was a memorandum in the letter but—

Q. Who did you look to for payment, Mr. Carrico? A. To Congressman Johnson. As I told you, I had written him at least three letters which I had turned over to you yesterday.

Q. You had been retained by Mr. Johnson? A. Yes.

Q. For a set fee? A. As local counsel. A fee of $1500 was guaranteed by Congressman Johnson. I ended up, I think, getting $1,497.50 attributable to the assignment back from me to the Charles County Land Company which cost s I recall, $2.50 so when the check came in, I did not bother about the $2.50.

Q. Now, at the time when you were first retained by Mr. Johnson to the end of this legal work, you did, will you tell the jury whether you had a few or a great many telephone conversations with Mr. Johnson? A. I know there were many conversations. I do not know how many. I cannot remember back, sometimes a day or so—to go back to 1960, I could not possibly tell how many there were. I remember on the morning of this sale, for example, there were three or four and prior thereto, I do not know. I never counted them.

* * * * * *

[TR 2937-2961]

DeSALES MUDD

DIRECT EXAMINATION OF MR. MUDD

By Mr. Doub:

Q. Judge, where do you live? A. La Plata, Maryland.

Q. And you are a lawyer? A. Yes, sir.

Q. How long have you practiced law down there? A. Since 1933.

Q. Have you held any governmental positions? A. I was the United States Commissioner for a few years.

Q. No other official positions? A. No, sir.

Q. Why do I keep calling you Judge? A. I think maybe you adopted that term from Congressman Boykin.

Q. What is the name of your partnership in La Plata? A. Mudd & Mudd.

Q. Had your legal firm handled the title to this Waldorf Property of some 8,000 acres over a long period of years? A. Yes, beginning in 1933. When it was acquired by Scott B. Appleby.

Q. So your office was very familiar with that property? A. Yes, sir.

Q. Now, do you recall any meeting with Mr. Johnson in La Plata on May 1, 1961, or do your office records show any such meeting? A. Yes, sir, my diary confirms a meeting in my office on the afternoon of May 1 with Congressman Johnson.

Q. What was the subject of discussion? A. My best recollection is that Congressman Johnson came in without an appointment and inquired if my office had handled this property for Lawyers Title Insurance Corporation at the time it was acquired in 1957 or 1958 by DG & R, Inc., of Maryland. I confirmed that we had.

Q. You confirmed that you had handled the legal title work in the past? A. Yes.

Q. Now, what else was said at that meeting? A. He asked if I had a copy in my file of a commitment, a title commitment that Lawyers Title Insurance Corporation had issued to the purchaser at that time, and I told him I did not, that the commitment had been issued by the Corporation from its Washington office, on the strength of certain title certifications that my office had made after title examinations in conjunction with Messrs. Fondi and Marselek of Lawyers Title Insurance Company.

Q. Do you recall any discussion about how comprehensive the survey had been of the property? A. Yes, he asked if I had any plats.

Q. Talk louder, I cannot hear you, Mr. Mudd. A. He asked if I had any plats of the property, and I told him that I did but I thought perhaps better plat information might be obtained from D. H. Steffens, the County Surveyor, whose office was in town. I believe I explained at the time that this property consisted of basically some 38 tracts and my title plats were plats of various tracts. And that at the time Desser & Garfield, Inc., of Maryland had acquired the property, Mr. Steffens had done some additional planning and put the entire parcel on two very large plats. Copies of those I didn't have but which I thought would be available from the County Surveyor's office, and my recollection is I called Mr. Steffens while Congressman Johnson was in the office to determine if he was available, and I believe the Congressman left my office to go to the Surveyor's office.

Q. What was the discussion as to whether you would participate in the foreclosure of the $6 million mortgage? A. My best recollection is that there was no discussion of that at the meeting on May 1, but in subsequent telephone conversations that matter was discussed. I believe on the May 1 meeting or some subsequent telephone conversation Congressman Johnson had asked my office to

examine the records and confirm to him that this mortgage was in fact a first lien against the subject property.

Q. Now, how long did that meeting on May 1 which you had with Mr. Johnson last, according to your office records? A. My time records indicate approximately an hour and a half.

Q. Now, when Mr. Johnson asked you either in that meeting, or in a later telephone call, whether you would work with him on the mortgage foreclosure, what did you tell Mr. Johnson? A. I ultimately told him that I felt that I should not, by virtue of having represented Desser & Garfield, Inc., at the time it acquired the property and gave the purchase money mortgage and which explanation I think he understood.

Q. Now, when was your next meeting with Mr. Johnson and any others who might have accompanied him? A. You mean personal meetings?

Q. Yes. A. There may have been others in my office. I have been unable to confirm any meeting with Congressman Johnson personally in my office from my office records or from my independent recollection; we did have any number of telephone calls and correspondence and it is possible he may have been in my office subsequent to May 1, 1961.

Q. Well, now, do your records show that on May 10, 1961, you did some work on this title? A. Yes, sir.

Q. Does it indicate you had a meeting that day? A. It indicates an office conference. My time records indicate an office conference on this matter on that date but does not identify with whom the conference was held.

Q. Now, on May 19, 1961, do your office records indicate that you took someone to lunch that day? A. I believe so. I have my diary in my brief case. May I confirm that?

What date was that?

Q. May 19. A. Yes. My diary shows that I was in conference from approximately one o'clock until two-fifteen on that date, regarding this matter, and I charged the firm $6.50 for taking somebody to lunch but I did not attend as a beneficiary. It was in connection with this transaction.

Q. It was in connection with this matter? A. Yes, sir.

Q. June 5, 1961, do you know whether Mr. Johnson was in La Plata? A. I have no such record in my diary which is only a time record on this transaction. That is June 5, you said.

Q. I said June 5, yes.

Now, Mr. Mudd, on June 7, 1961, do your records indicate anything? A. Yes. I have half-hour time charged to this transaction.

Q. Do you know whether Mr. Johnson telephoned you on that day? A. I have no confirmation but it is possible, because we had many, many telephone conversations about this matter.

Q. Well, now, had you, after May 1, 1961, did you proceed to go to work on this title and bring it down to date? A. Yes, sir, and I think probably not as fast as Congressman Johnson wanted because my best recollection is he needled me about it a little during that period and we gave him a written report on June 14 although my covering letter is dated June 14.

Q. Have you any recollection of discussing with Congressman Johnson on the telephone the fact that the so-called "window" had been released from the lien of the mortgage? A. Yes, sir, that was one of three or four phases of the matter. He asked us to investigate. No. 1, as I mentioned was to confirm that this mortgage held by Ernest was in fact a first mortgage against the subject property and No. 2, that some approximately 100 acres that had been released from the purchase money, $6 million mortgage, was free and clear and not encumbered, and

I think he asked specifically about mechanics liens because the owner, D & GR, Inc., of Maryland had done extensive work on this released area and he apparently was apprehensive that some of that work may not have been paid for and that released area might be subject to possible liens for unpaid improvements. And we did give him a report on that.

Q. Does your diary show you did some work for Mr. Johnson on July 17, 1961? A. July 17.

Q. I am getting a little ahead of myself here. Suppose I strike that out. Is this a letter or an office copy of a letter you wrote Mr. Robinson dated June 14, 1961? A. Yes, sir, this is my file copy of such a letter which indicates that the actual title work was probably done by my associate at that time, Frank G. Parrin, and the letter was drafted by him for my signature.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson's exhibit 35 marked in evidence.

(Defendant Johnson exhibit 35 marked in evidence.)

(Mr. Williams) Mudd to Robinson, is that right?

(The Clerk) Letter dated June 14, 1961. It says "To Robinson from Mudd."

By Mr. Doub:

Q. Would you read that to the jury, Mr. Mudd? A. This letter dated June 14, 1961, addressed to Mr. W. L. Robinson, care of First Colony and Continental Savings and Loan Association, 5410 Wisconsin Avenue, Chevy Chase, Maryland.

"Dear Mr. Robinson:

"Enclosed you will find the original and a copy of our Opinion of Title with respect to the mortgage which your company has acquired from Albert Ernest, and which I trust is sufficient for your purposes:

"Our certificates shows the mortgage to be in favor of Ernest for the reason that the assignment to your company was not a matter of record at the time we made our last check, and our certificate must necessarily be according to the situation as of record. If, for any reason, this certificate is not sufficient for your purposes, kindly advise.

"Also enclosed you will find two copies of the contract of purchase by and between Charles County Land Corporation and Mr. and Mrs. Allison F. Ryon, and which have been executed on behalf of the sellers. I have represented to Mr. Ryon that the purchasing company would execute both copies and return one to me for delivery to the sellers. I call your attention to the fact that paragraph 8 has been rewritten in order to obligate the purchaser to pay all conveyancing costs except Federal documentary stamps. It was the final decision of the Ryons to make no objection to the contract in its original form except to request that paragraph 8 be revised in this manner and which I took the liberty of doing.

"Very truly yours."

Q. Do you know why you wrote that letter to Mr. Robinson rather than Mr. Johnson—have you any recollection of that? A. No, sir, I can only speculate that Congressman Johnson directed—

Q. Had you met Mr. Robinson prior to the date of that letter? A. I met Mr. Robinson at some stage of these matters but whether it was before or after this letter, I do not recollect.

Q. Did you have any discussions with Mr. Johnson regarding the Collier property? A. Yes, sir.

Q. And what were they about? A. Well, my best recollection is that on the occasion of Congressman Johnson's initial visit, I told him that our office was in the process of handling possibly three phases of this matter for D. G. & R., Inc., of Maryland at the time its development of the property terminated and one involved the acquisition of

the Ryon tract, another an exchange for property with Gulf, and another perfecting the title to 9 acres of the Collier tract. The Collier tract having been acquired, I believe, not by Ernest but by either Washington Lumber and Turpentine Company or Tensaw Land and Timber Company, prior to the sale to D. G. & R. Inc., of Maryland.

Q. In other words, there had been negotiations for the purchase of the Collier property prior to the deed of this property to Charles County Land, is that correct? A. Yes, that is correct.

Q. And now after the conveyance of the property to Charles County Land Company, what was done with respect to these pending acquisitions? A. We obtained at some stage of the proceeding a quit claim or confirmatory deed to, I believe, nine acres of the Collier tract concerning which the title was not perfected at the time it was required, either by Tensaw or Washington Lumber and Turpentine Company.

Q. How about the Ryon tract that you mentioned? A. At the time Congressman Johnson came to my office on May 1, I believe, 1961, I think I acquainted him with the fact that D. G. & R., Inc., of Maryland, had contracted to purchase from Ryon 199 acres plus, which was a wedge-shaped parcel of land fitting into this 7,000 or 8,000 acres but that the corporation had not consumated the purchase and that, if his client proposed to acquire this property, that he might be interested to know that this Ryon matter had been under contract but had not been concluded. And therefore, he authorized me to conclude that transaction for Charles County Land.

Q. And the Ryon tract was then bought by Charles County Land? A. Yes.

Q. And the Ryon tract was conveyed to Charles County Land Company? A. Yes, sir.

Q. And you handled the settlement on that? A. Yes, sir.

Q. Now, I show you what purports to be an office copy of a letter—

(Mr. Robinson) Your Honor, before we get to the next letter, could we take a short recess, please, sir?

(The Court) All right.

The jury will take a five-minute recess.

(Brief recess.)

By Mr. Doub:

Q. Mr. Mudd, I show you what purports to be an office copy of a letter from you to Charles County Land Company, in care of The Honorable Thomas E. Johnson, dated July 17, 1961, and ask you whether you wrote that letter? A. Yes, sir, I did.

(Mr. Doub) I would like to offer this letter in evidence.

(The Clerk) Defendant Johnson's Exhibit No. 36, marked in evidence.

(Defendant Johnson's Exhibit No. 36 marked in evidence.)

By Mr. Doub:

Q. Will you kindly read that to the jury, if you will? A. Yes, sir.

This letter dated July 17, 1961 is addressed:

"The Charles County Land Company, Inc.,

"C/O Hon. Thomas E. Johnson

"Snow Hill, Maryland.

"Re: Desser & Garfield (Md.), Inc. Property described in Release dated March 21, 1960, recorded in Liber No. 147, Folio 508

"Gentlemen:

"Our examination of the pertinent Charles County Land Records as indexed by the Cott System in the Office of

the Clerk of the Circuit Court for said County from March 28th, 1958 at 3:30 P.M. (the date and time of our report to Lawyers Title Insurance Corporation on the subject property, a copy of which has been furnished you) through July 14th, 1961 at 4:30 P.M., discloses the following changes by way of supplement to the March 28th, 1958 report.

"1. Deeds from Albert Ernest and others to Desser & Garfield (Md.), Inc. (or by whatever name or names the grantees are identified of record) transferring title to the said nine parcels, and copies of which said deeds we believe are available from your files.

"2. Deed from William J. Collier and wife, dated February 5, 1960, recorded in Liber 147, folio 76, for the nine and one-fourth acres referred to as Parcel 8 in the report to Lawyers Title Insurance Corporation, the effect of which deed is to release and quit-claim unto the Grantee any and all right, title and interest the Grantors may have in and to said nine and one-fourth acres, and which said deed gives the Grantee the benefit of the adverse possession right of the Grantors set forth in Exception A of the original report.

"3. Right-of-way easement and plat from Albert Ernest et a., dated March 28, 1960 and recorded in Liber 147, folio 514, to the extent that the same may effect the released parcels.

"4. The possible effect (front foot easements) of the 20 foot easement for water lines between the roads, as granted to Charles County Sanitary District, Inc. by the indenture dated January 23, 1961 and recorded in Liber 152, folio 249.

"5. State and County taxes for the fiscal year beginning July 1, 1961 now due and payable for part of the total amount of $7,075.18; such taxes subsequent to the current fiscal year; such taxes, assessments or liens against so much of said property within the recently created Sanitary District as may be subject thereto.

"6. The exceptions set forth in our report of March 28, 1958, identified as C through I, both inclusive, as well as the concluding paragraph of the report of March 28, 1958, are still applicable to a current report on the title to the subject property.

"This status report includes no certificates as to acreage, accuracy of description; does not certify against unrecorded Mechanic's Liens—

(The Court) Mr. Doub, can't we just take so much for being read? Do we care about all the ultimate details of this?

(Mr. Doub) I think he is almost finished.

(The Court) This is a title report with references to deeds and title references and the usual exceptions and so forth.

(Mr. Tydings) The Government will accept any description Mr. Mudd wants to make of the document, and you can pass it around to the jury, if you like. Mr. Doub. I think it will speed this along. Just ask Mr. Mudd what the letter is and give it to the jury.

(The Court) Just summarize what they are.

(Mr. Doub) Very well, Your Honor.

By Mr. Doub:

Q. I show you what purports to be an office copy of a letter from you to Mr. Johnson, and ask you whether you wrote that letter to him? A. Yes, July 18, 1961.

(Mr. Doub) I offer it in evidence, Your Honor.

(The Clerk) Defendant Johnson's Exhibit No. 37 marked in evidence.

(Defendant Johnson's Exhibit No. 37 was received in evidence.)

(Mr. Doub) Well, this is a short letter, Your Honor, of only a paragraph. Will you read that please?

(The Witness) (Reading)

"July 18, 1961

"Honorable Thomas E. Johnson
Room 141, Old House Office Building
Washington, D. C.

Dear Congressman Johnson:

"After the transfer of title to the Charles County properties from Desser & Garfield (Md.), Inc. to The Charles County Land Company, Inc. had been concluded here yesterday, I was instructed to send a bill to you for our services to date.

"Frankly, our services in this matter are difficult to evaluate, and I had no basis other than the time involved, some of which had to be on an emergency basis with a lot of after hours work. The enclosed bill, therefore, represents the time that we have spent in answering the several inquiries regarding this property, examination of the records and telephone and written reports, as well as conferences that we have had with officials of the company and counsel from the date you first came to the office to discuss the situation. I, therefore, trust you will consider the charge reasonable, and we have not attempted to bill you for title services or on the basis of the value of the property involved for the reason that we have not given the final and conclusive title opinion, but in the sense have given you the benefit of our files, plus interim reports.

"Very truly yours,

"F. DeSales Mudd"

By Mr. Doub:

Q. I show you what purports to be a letter from Mr. Johnson to you and ask you if you received that letter? A. Yes, I did. The letter is dated July 21, 1961.

(Mr. Doub) I offer it in evidence, Your Honor.

(The Clerk) Letter dated July 21, 1961, Defendant Johnson's Exhibit No. 38, marked in evidence.

(Defendant Johnson's Exhibit No. 38 was received in evidence.)

(Mr. Doub) It is addressed:

"F. DeSales Mudd, Esq.

La Plata
Maryland

Dear Mr. Mudd:

"I understand that the Lawyers Title issued a Title Commitment on all or a major portion of the Waldorf property some time during 1958, based on your Title Opinion. I am wondering if it is possible to secure a copy of same.

"Your statement has been forwarded to the Company with the instructions that check be issued.

"With kind personal regards, I am

"Sincerely yours,

"Thomas F. Johnson."

By Mr. Doub:

Q. Now, I show you what purports to be an office copy of a letter to Congressman Johnson from you dated August 2, 1961, and ask you if you wrote that letter? A. Yes, sir, I did.

(Mr. Doub) I offer it in evidence, Your Honor.

(The Witness) I might say I don't believe the longhand postscript on that copy appeared on the original.

(The Clerk) Defendant Johnson's Exhibit No. 39 marked in evidence.

(Defendant Johnson's Exhibit No. 39 was received in evidence.)

By Mr. Doub:

Q. Will you read that letter to the jury, sir? A. Do I read it or summarize it?

(The Court) If he wants it read, read the whole thing.

(The Witness) (Reading)

"August 2, 1961

"Honorable Thomas F. Johnson

Room 141 — House Office Building
Washington, D. C.

Dear Congressman Johnson: Re: Ryon Purchase

"I wish to confirm that Mr. and Mrs. Allison F. Ryon are now ready and willing to deliver the deed for their farm property to the Charles County Land Corporation, and we are prepared to make settlement. In this connection, we enclose the following:

"1. File copy of deed executed by the Ryons, and which you will note from the second page contains reservation of possession in favor of the Sellers consistent with the provisions of the contract in this respect.

"2. The original and a copy of the mortgage note and mortgage to be executed by the officials of the purchasing corporation, in the amount and terms specified in the contract. You will note that the mortgage includes (as the contract requires) the two release clauses and the subordination clause contained in the contract of sale. We did not know the names of the officers of the purchasing corporation, which can be filled in at the time the mortgage and note are executed, and returned to us with settlement instructions.

"3. Original and one copy of a settlement sheet, one copy of which we will thank the purchaser to approve and return. The contract requires taxes, etc., to be adjusted to December 31, 1961. Since our taxes are levied on a fiscal year from July 1 to June 30th, and taxes for

the current fiscal year in the amount of $180.36 are now due and payable on this property, and must be paid before the deed can be filed for record, we have charged one-half of the amount to the Sellers, and billed the purchaser for one-half. It is my understanding that there are no rents to be adjusted, and it is assumed that the Sellers will cancel their insurance on December 31, 1961, and that the purchaser will place in force as of January 1, 1962, insurance in the amount required by the mortgage which would appear reasonable.

"4. Our bill for services and disbursements incident to closing this transaction, including purchaser's share of taxes for the current fiscal year.

"If the purchaser desires owner's title insurance, we are in a position to obtain same at this time at the standard rate by the several companies, which in this instance, would amount to $265.00.

"If there is any question, you can telephone me, and you will understand that the closing cannot be concluded until the executed note and mortgage are delivered to the Sellers at settlement. I, of course, have in hand the funds representing the initial $10,000.00 payment. The question has not been raised, but you might consider whether it is advisable under the circumstances that the Sellers have a certified copy of the resolution of the purchaser corporation approving the acquisition of this property for the corporation, and the execution of the mortgage by the appropriate officers.

"With kindest regards, I am

"Sincerely yours,

"F. DeSales Mudd."

Q. Mr. Mudd, returning to the letter Mr. Johnson wrote you, dated July 18, 1961, in which he asked you to send him a copy of the title commitment, which you had made in 1958 for Lawyers Title, and I notice that in the succeeding letters you did not send him that.

Did there ensue after you received his letters some telephone discussion with him about that matter? A. I am reasonably certain we did have telephone conversations which explain the fact that I as a local attorney for Lawyers Title Insurance Company did not have a copy of its title commitment, but all I had was a copy of my report or one of my reports to Lawyers Title Insurance Corporation, on the strength of which the title insurance company issued the commitment.

Q. Well, will you state whether or not you told Mr. Johnson where a copy of that commitment could be obtained by him? A. Yes, sir. My recollection is that I told him that it had been issued from the Washington Office of Lawyers Title Insurance Corporation, and that I had worked with Mr. Fondi and Mr. Marsalek in connection with this title commitment; that Mr. Fondi was no longer with the company, and I suggested he contact Mr. Marsalek, who worked out of the Washington office, but lived in Baltimore.

Q. Do you know whether Mr. Johnson did communicate with Mr. Marsalek? A. I have no knowledge of that.

Q. Did you receive a letter dated August 10, 1961; from Harry Adelberg? A. Yes, I did. I received the letter dated August 10th, the original of which you have, from Harry Adelberg.

(Mr. Doub) I offer it in evidence, Your Honor.

(The Clerk) Defendant Johnson's Exhibit No. 40 marked in evidence.

(Defendant Johnson's Exhibit No. 40 was received in evidence.)

(Mr. Doub) This is on the letterhead of Mr. Harry Adelberg, 1235 Mathieson Building, Baltimore 2, Maryand.

"August 10, 1961

"Mudd & Mudd

Attorneys at Law

La Plata, Maryland

Attn: F. DeSales Mudd, Esquire

"Re: Charles County Land Corporation Purchase of the Ryon property

"Gentlemen:

"Your letter of August 2, 1961, directed to my associate, The Honorable Thomas F. Johnson, has been referred to this office.

"May I suggest the following changes in the mortgage:

* * * * * *

Q. Going back to early May, 1961, did Mr. Johnson ask you to deliver the original mortgage, $6 million mortgage from Desser & Garfield to Mr. Carrico, or did Mr. Carrico ask you to deliver it to him? A. My best recollection is that Congressman Johnson asked me to deliver it to him.

Q. Is that the mortgage—was that for mortgage foreclosure purposes? A. Yes, sir.

Q. Did you ever meet a Mr. Edlin? A. I think on one occasion. I am sure I met him. I have no recollection except on one occasion.

Q. When was that? A. I can not say. My best recollection—my best estimate would be some time in 1961.

Q. Did you ever meet Mr. Robinson? A. Yes, sir.

Q. Where? A. In my office.

Q. And was he by himself or with someone? A. He was. I am quite sure when he came to my office he was with someone but I do not recollect who at the moment.

Q. Is it possible that could have been Mr. Johnson? A. It is possible, yes, sir. I might say that my records un-

fortunately do not disclose who I saw in the office, if I did not have an appointment.

Q. Will you state whether or not you have any recollection of Mr. Johnson's telling you in the latter part of July, 1961, that he was preparing to leave the country and this matter was going to be handled by anyone else other than himself? A. I am sure I had instructions from him to make reports to Mr. Robinson but I do not have an independent recollection of his telling me that he expected to leave the country.

(Mr. Doub) That is all.

* * * * * *

[TR 3019]

ISABELLA J. KICAS,

* * * * * *

[TR 3021-3025]

Q. Where do you live? A. 6710 Windsor Mill Road, Baltimore 7, Maryland.

Q. Now, were you employed by Mr. Harry Adelberg during the year 1961? A. Yes, I was.

Q. All during that year? A. Yes, sir.

Q. Now, do you recall in April, 1961, Mr. Johnson and Mr. Robinson being in Mr. Adelberg's office? A. Yes, I do.

Q. Do you recall the date? A. It was a Saturday and it was the 29th of April.

Q. Now, why do you remember the date April 29, 1961? A. Well, my daughter and I had moved in to a very pretty apartment on the 21st of April and we were busy fixing it up and when Mr. Adelberg called, it was a Saturday and we were hanging drapes in the living room and I had to drop my end and go and I just remember it, that is all.

Q. Now, this is on a holiday, April 29 was Saturday? A. It was a Saturday.

Q. And you were not regularly working that day? A. No.

(The Court) She said that twice, Mr. Doub. Let us get ahead.

By Mr. Doub:

Q. How did you happen to go to the office that morning? A. Well, Mr. Adelberg had told me the day before he might need me but unless he called me, I was not to come in and he called.

Q. He did call that morning? A. Yes, sir.

Q. About when did you arrive at the office that morning? A. Oh, I would say 10:30.

Q. And who was there? A. Congressman Johnson and Mr. Robinson and Mr. Adelberg.

Q. And were there any secretaries there? A. Yes, there were two girls there.

Q. What were their names? A. One was actually a client. She had come in for an early morning appointment. Mrs. Lilly Nelson and Mr. Adelberg needed a secretary which she was, for another firm, and he asked her to stay and do some work until I got down there.

Q. What was the name of the other secretary? A. Her first name was Rosalie. I did not know her last name. I only saw her once.

Q. Was it Brenner? A. She said she had worked for Judge Thomsen at one time or another.

(The Court) Our firm had a girl who married a man named Brenner. She was a good typist.

(The Witness) Well, then, that is the girl that was there.

(The Court) She was never my secretary. She was Mr. Smith's secretary. She was a competent girl.

By Mr. Doub:

Q. What did you do after you arrived there? A. Mrs. Nelson was at my machine working on some documents and Rosalie was at the other machine which were all there were, so Mr. Adelberg said, "You come in and start taking dictation, and by the time you are finished taking dictation Mrs. Nelson has to go and her machine will be vacated and you can start to transcribe," so that is what I did.

Q. Who dictated to you that day? A. Mr. Robinson started, Mr. Adelberg and Congressman Johnson were sitting there, and they would stop and confer, and when Mr. Robinson dictated quite a long document, I went out to my machine. Mrs. Nelson had gone in the meantime, and Congressman Johnson came out and he said "Transcribe that in the rough and then show it to me," and so I did, on the yellow paper, you know, and then he read it and then he said, "Come on over" into one of the associate's offices, and he dictated again. This and some more things.

Q. You mean he redrafted it? A. Yes.

Q. And then did you write it up, type it up? A. Yes, I did.

Q. And what was Mrs. Brenner doing? A. Well, she was working on some other documents.

Q. Now, do you have any recollection of the documents which were dictated by Mr. Robinson and Mr. Johnson that day? A. Well, I think it had to do with Charles County Land Company.

Q. Charles County Land? A. We had many, many documents and after this space of time, it is a little hard to say just exactly which ones they were.

Q. Have you any recollection of the name Desser & Garfield? A. Yes, sir.

Q. But you do not recall the specific documents by name, whether they were loan agreements or anything? A. There was a loan agreement.

Q. How long did this work continue on that Saturday? A. Well, I guess it was four o'clock when I left and they were still there working. They said they were going to keep on working. I had an engagement and said I would have to go.

Q. At 4:30 when you left, was Mr. Johnson still working and Mr. Robinson still working? A. Yes.

Q. And were the other girls still there, or one of them? A. No, Mrs. Nelson had gone. As I said, she was a client. She was just retyping some documents that had been done and had been revised. I do not think the other girl stayed there that long. I am not sure.

* * * * * *

(Vol. 25 [3040]) Therefore,—

HARRY ADELBERG

was called as a witness by and on behalf of Defendant Johnson, being first duly sworn, was examined and testified as follows:

(The Clerk) State your name for the record.

(The Witness) Harry Adelberg.

(The Clerk) Spell your name.

(The Witness) A-d-e-l-b-e-r-g.

[3041] DIRECT EXAMINATION

By Mr. Doub:

Q. Mr. Adelberg, where do you live? A. 5514 South Bend Road, Baltimore, Maryland.

Q. And you are a lawyer, a member of the Baltimore Bar? A. I am, sir.

Q. And you offices are where? A. At 1235 Maryland National Bank Building, Baltimore.

Q. And you are a friend of the Defendant Thomas Johnson? A. I have known Congressman Johnson for perhaps fifteen or twenty years. I have known him well.

Q. And, as a matter of fact, does his name not appear on the door of your law firm at 10 Light Street? A. His name is on my front door, yes, sir.

Q. How long have you had any business association with Mr. Johnson? A. I would say, Mr. Doub, perhaps as long as fifteen years. That is an estimate. I do not know accurately, and I might say by way of explanation, with respect to the Congressman's name on my door. I would say his name has been on my door for perhaps ten to twelve years and is on my door under these circumstances:

He has his name on my door. His name is in the [3042] telephone book under my telephone number. He does not maintain an office in my suite. He does not have a desk, but at all times my office or any office in the suite has been available to him for his use.

I might say further that during the past years it has been a very happy association. He has referred cases to our offices that we have handled from time to time, and when the occasion permits I have referred matters to him.

Q. Now, turning to February 1961, do you recall receiving a telephone call from Mr. Johnson telling you that he had found something in looking at some Cassell mortgages? Do you remember that? A. I would say that perhaps in February of 1961 I received such a call from the Congressman, and at that time my recollection is that he told me that he would like to have me review some mortgages in a building association portfolio.

He indicated that he felt that there were some legal questions involved; that there was some deficiencies, but I do not believe that he expressed an opinion to me. He wanted to get my views to confirm his views. As a result of that inquiry—

Q. What did he ask you to do? A. He asked me to visit the building association, which was in Chevy Chase, Maryland.

Q. What was its name, First Continental? A. First Continental Savings and Loan Association offices, but, as a matter of fact, the portfolio of mortgages that I examined at that place were not only First Continental mortgages, but it included a large portfolio of First Colony mortgages. First Colony Savings and Loan Association, I think the name was.

Q. Then, as I understand what you have just said, Mr. Johnson asked you to go to the office of First Continental and examine mortgages there of First Continental and First Colony? A. That is right, sir.

Q. Did he ask you to check the whole mortgage portfolio of both companies? A. Those were his requested instructions.

Q. What did he ask you to check for? A. Well, I know what I found, and I believe in the conversation with him—

Q. No, before you get to what you found, tell us what he asked you to look for? A. I would say legal deficiencies in the mortgage, with particular regard to a deficiency in the affidavits.

Q. Under the Maryland law a mortgage requires an affidavit of consideration, doesn't it? A. That is correct, sir.

Q. That the consideration stated in the mortgage had been actually paid? A. That is correct, sir; that is, Mr. Doub, it requires an affidavit by the mortgagor to the effect that the mortgagee's mortgage, and an affidavit by the mortgagee that the consideration has been paid that is recited in the mortgage.

Q. Did Mr. Johnson tell you why he wished you to do this? A. I thought we already covered that, Mr. Doub. He indicated he wanted me to examine those mortgages to confirm his opinion that the mortgages may be deficient.

Q. Now, did you then go to Chevy Chase and examine the mortgage portfolios? A. I do not remember the exact date, but thereafter, certainly within a couple of weeks, I assume, I visited the Chevy Chase office on Wisconsin Avenue in Chevy Chase, a comparatively new or modern building, of the First Continental Savings and Loan Association, and I there met a Mr. Robinson and some other people, whose names I now know, but I am not certain as to who was present at the time.

I spent several hours in the offices of the building association, and I reviewed the mortgages generally, but it was too much work for one casual visit. I saw sufficient to justify the suspicion of the Congressman.

Upon my return to Baltimore, I assume, I called him and—in any event, I spoke to him over the telephone and confirmed his view—at least I confirmed the view that these mortgages were deficient. They were without the affidavit of consideration.

Thereafter there were other conversations, but I suppose you want to ask about them.

Q. Now, before you get to that, were the mortgages that you are referring to mortgages made to A. I. Cassell? A. The mortgages that were deficient were the Cassell group of mortgages. Most of the mortgages were the Cassell group. Let me correct myself. All of the Cassell mortgages I do not believe were defective, but there were some 305 mortgages that were defective.

Q. And were those purchase money mortgages on individual lots which had been sold to buyers by Cassell? A. That is correct, sir.

Q. And then had those mortgages been pledged with First Continental or First Colony as security for loans? A. That is substantially correct. Actually, what appeared to be the picture, and at that time I had no doubt on that aspect, but I later learned that there was a general loan agreement and a general mortgage between Cassell and

the First Colony Savings and Loan Association, and I might say, incidentally, as a result of those negotiations and examinations of mortgages I did meet Mr. Cassell, but the portion of those mortgages which related to lots that were sold publicly were all defective mortgages.

Apparently as each lot was sold a separate mortgage was created on the individual lots. I might say that I examined my records, and those 305 mortgages totaled $973,000, and some odd cents and so forth, and each mortgage was individually bad.

Now, if I may—does that answer your question, Mr. Doub?

Q. Yes. A. All right, sir.

Q. And did you after making that examination report what you had found to Congressman Johnson? A. I did, sir. I am not sure whether Congressman Johnson called me or I called him, but I know I so informed him and advised him and confirmed his suspicions or his judgment.

Q. And what happened next? A. Thereafter we had some discussions about it, and then the mortgages at my request were all brought to my offices. I think Mr. Robinson, who is at the trial table, brought those mortgages to my offices, and then we made a rather careful examination.

Now, I might say this, that the mortgage forms were substantially alike, but we felt it necessary before we passed on 305 mortgages to examine 305 mortgages.

After we examined the papers, two problems came into being. The first, Robinson refused to accept either my judgment or the Congressman's judgment that the mortgage was defective. We then had to research some law, and I submitted my memorandum or my work to Mr. Robinson.

He still wasn't satisfied, and then some time during that period of time the Congressman came to the offices and these mortgages were placed in the room of one of my

associates, in Mr. David B. Rudow's room, and the Congressman went in there, and he spent some time examining the mortgages.

After that while he was still in the offices, as a matter of fact, he apparently engaged in some research while in the offices. I say that because in examining my own files, I found a handwritten memorandum of the law prepared by the Congressman in my files, and attached to the papers that were part of the Cassell mortgage examination.

A very peculiar thing happened. Robinson continued to be unhappy, even though we pointed the law out to him until he had occasion to record a mortgage. I am trying to remember the name of the lawyer. I think he was in Mr. Sasscer's office and Mr. Sasscer promptly told him that mortgage which was not of that same type was deficient because it lacked an affidavit of consideration. Apparently Mr. Sasscer had the occasion to reconfirm that view.

He promptly returned to my offices and started discussing the method of correcting this deficiency. It was my judgment at first that it was desirable that each mortgage be confirmed individually because they involved perhaps different interests.

Robinson strenuously opposed this view and the reason for his opposition was a very simple one. It first required the execution of the 305 mortgages. The expense of recording affidavits and all the other incidental expenses and he tried to come up with some view, I think he called it an assignment or indenture, and I refused to accept his views or judgment in that area. We discussed it with the Congressman over the telephone and perhaps, in person, but I want to say to you, Mr. Doub, in that area, I am a little confused as to the Congressman's participation. I do not remember whether he was in the offices or I spoke to him over the phone.

Q. Were you and the Congressman in agreement or disagreement as to your final conclusion as to what recom-

mendation immediately should be followed? A. Entirely in agreement and, as a matter of fact, we finally worked out a confirmatory mortgage for the entire group of three hundred five, bringing out, I think there was 311 mortgages but removing from that group that was confirmed in the single document, the 305 mortgages.

Now, I might say that this extended over a period of a couple of months.

Q. The work on this matter? A. The work on this matter. First one of the reasons was that Robinson refused to accept our judgment immediately and then it was a question of catching up one with the other. But I know that we finished at some time in, perhaps, mid-April or early April or thereabouts and I think that the papers were finally recorded perhaps in May, but my memory in that respect is bad because I did not record them. I gave them to Robinson for execution, for procurement of execution and recordation and I am assuming that it was properly done. But that is the picture in that area, sir.

Q. Now, you mentioned that there was a basic underlying mortgage made by A. I. Cassel. Did you find that that basic mortgage was defective or— A. There was an overall mortgage that I found that was a good mortgage. At least in our judgment it was a good mortgage. That was a basic mortgage. But actually, in technical handling of that mortgage, I did not approve of their procedures and the reason for that is this: While they had a mortgage on the whole, they were then creating individual mortgages on individual lots as the individual purchaser would purchase. It seemed to me that good policy and good operation demanded that, as a purchaser would come in with an individual interest that mortgage should be released, the basic mortgage should be released as to the individual lot so that the lien should be limited to the proper lien and the proper indebtedness.

But I did not get into that too far because it was not within my province and at that time I think that was just

about the first dealing I had with Mr. Robinson, although I have a vague recollection and I am told that I met him sometime before that, but it is not specific in my recollection. I just do not remember.

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[TR 3056-3076]

By Mr. Doub:

Q. Mr. Adelberg, did Mr. Johnson bring you into the mortgage foreclosure case with respect to the Desser and Garfield $6 million mortgage in Southern Maryland? A. That is a very difficult question to answer exactly as you propounded it. Mr. Robinson, sometime in April of 1961, came into the offices with the Desser & Garfield mortgage. It was a $6 million mortgage and he indicated that he or his interests, he represented parties who wanted to take over this property and had some interest in it. We discussed the mortgage and started tearing it apart because it was an unusually drawn instrument with a note, while apparently a note merely set forth terms that carried with it no personal liability or obligation. In the course of the discussion I know that I spoke to Mr. Johnson.

Q. Do you know whether Mr. Johnson sent Mr. Robinson to you on that occasion? A. I know that Robinson was in. I know that Robinson would come to me only as a result of Mr. Johnson or Congressman Johnson's reference but at the time Robinson walked in directly but in the course of the morning discussion, I might say to you, we spent an entire day in the discussion and examination of the law. Other members of my staff joined in. We examined law and we called the Congressman on the phone and there were a number of discussions. I do not remember the Congressman in that day, although I might say to you, Mr. Doub, that some suggestion has been made that he was in. I do not remember him. I know that I spoke to him about it and I believe it was on the telephone. We reviewed the mortgage and it was a very tricky mortgage and very frankly, after we reviewed it and we came to a fixed conclusion and I say

it took just about an entire day. We examined law. I had different men in the office examining the law, coming back with references. We discussed it backwards and forth and finally came to a conclusion.

There was a question whether we would execute or proceed on the note, whether to proceed on the mortgage—whatever the recommendation would be.

I might say to you, too, that at that time I did not know Desser & Garfield. I do not know them now. I have never seen them nor heard of them other than this reference and several references subsequently. There was a man by the name of Ernest who was the mortgagee or owner of the paper. I do not know Ernest, never saw him and never heard of him except by reference.

We worked on it, as I said, just about the entire day. Robinson then left with these papers with our recommendations and I heard nothing further about it until about the first of May when Congressman Johnson called on the telephone and discussed language of a notice that he was sending to Desser & Garfield indicating default in the mortgage and note.

Q. You mean giving him notice? A. Giving him notice of default. I discussed the language with the Congressman. He then called back, I think the next day and by that time I had made some research. He apparently had engaged in some research and he then revised his notice as a result of combined discussion and I think he, at least he said, I do not know this but at least he told me that, based on our conversations, he was going to send a second notice. I heard no more about the Desser & Garfield mortgage. I do not know its disposition. I might say, incidentally, while Mr. Robinson was in the offices and we discussed the note, he also indicated that there was some possible room for purchase of the Desser & Garfield interest, but he regarded their claim as so extravagant at the time that he was not interested and this was a rather extensive and long discus-

sion and I am trying to summarize real fast for you a one-day session.

Q. Now, was it at that meeting or another meeting where a tax problem was discussed? A. I do not think tax problems were at all discussed that day. I might say by way of answer to that, that while I try cases in the tax court of the United States, I now have in my office a young man who is an excellent tax man and I refer all such matters to him for discussion and examination.

I know that he at one time participated in a discussion of tax liability and responsibility in connection with the Desser and Garfield mortgage. I do not remember whether there was discussion in the office. There could have been, and incidentally, I am referring to David Rudow whom I mentioned yesterday.

Q. Do you recall Mr. Johnson or Mr. Robinson coming to your office on Saturday, April 29, 1961? A. I now do, yes, sir.

Q. You do? A. I might say by way of explanation in that area, Mr. Doub, that that Mr. Robinson and Congressman Johnson visited my offices in the last several months asking me for the date of this Saturday visit. I could not recall it.

He mentioned my secretary who was present at the time. I called her on the phone—a Mrs. Isabel Kicas. Isabel remembered it very well and was able to pin it down to a particular Saturday, April 29, 1961.

With that information I was able to call—

Q. In other words, you recall a Saturday but you did not recall the date? A. Well, I am able to recall it precisely now and I was trying to tell you why, sir. I then called Mrs. Rosalie Brenner, the second secretary who worked that day and, as a result of her advice, I was able to go to my records and pick out a check that I paid her for services rendered on April 29, 1961. As a matter of fact,

with that information I then discussed it in the office and there was no question in my mind about the date. It was April 29, 1961 and there was a funny incident with respect to it.

Congressman Johnson and Mr. Robinson did not have an appointment with me that day. My only appointment was with a client, a Mrs. Lilly Nelson, who was due in the office at 10:30 that morning, perhaps 11 o'clock. They walked in. They wanted to do some work. They wanted stenographic service and help.

Mrs. Nelson walked in. She is a secretary by profession as well as a housewife. They impressed her to work. She went to work. She was a very unhappy woman. In the meantime I called Rosalie and Isabel. They came in and she scooted out of there as fast as she finished what she was typing. We never discussed the matter she came to the office about. She too, remembers the date very well.

Q. So there were three girls working for Mr. Robinson and Mr. Johnson that day? A. Yes, sir.

Q. Do you know how long they were dictating to the secretaries and were in the office? A. Yes, I know that Rosalie did not leave until after six o'clock and the reason for that was, she had to finish up work. I know that Rosalie took dictation from the Congressman. She took dictation from Robinson. I know that Isabel took dictation from both. I participated very, very little because, frankly, I was not interested in the matter nor was I participating. They intended merely to use my office as a vehicle for their purposes.

Q. Did Mr. Johnson bring you into this matter? A. No. As a matter of fact, I did look at some language that was subject to discussion. I am not even sure I remained in the office steadfastly. I believe I left and returned.

But my son-in-law David Rudow, was again working that day. In speaking to Rosalie, she emphasized it because

she sent him out at five o'clock to move her automobile which was parked down in Sam Smith's parking lot.

Q. Were you close enough to the work they were doing there to know what legal instruments they were preparing? A. Yes, they seemed to be preparing a loan agreement of some sort involving, I believe, Charles County Land Company. And the reason the name sticks to me, sticks in my mind is that I had incorporated Charles County Land Company only a few days ago, a few days before at the instruction of the Congressman, Congressman Johnson.

Q. Upon his instructions did you prepare the articles of incorporation for Charles County Land Company? A. Yes, sir. Congressman Johnson called on either April 25 or April 26 of 1961.

We immediately went to work on the certificate of charter, by-laws and preliminary minutes. We used all my office staff. As a matter of fact, Isabel was one of the incorporators. Another secretary Catherine Sennett, was the second incorporator and then my second son, David Adelberg, was the third incorporator.

Q. Was that incorporated under the laws of the State of Maryland? A. Yes. I might say I named myself in the charter as the resident agent for Charles County Land Company.

Q. Can you recall whether Mr. Johnson indicated there was some urgency about the matter? A. Yes, he called and asked to give it the right-of-way and, as you see, it did get the right-of-way. As a matter of fact, it was not even delivered by mail to the State Tax Commission. We delivered it by hand and, as a matter of fact, we prepared a check and the check was not adequate, and I have the receipt with me that required me to pay an additional $2.00 on April 27.

(Vol. 26 [3053]):

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[3063] By Mr. Doub:

Q. I show you what purports to be a note from Mr. Johnson to you of June 2, 1961 and ask you if you received that? A. I did, sir.

[3064] (Mr. Doub) I offer it in evidence, Your Honor.

(The Clerk) Defendant Johnson Exhibit 47 marked in evidence.

(The Court) Any objection?

(Defendant Johnson Exhibit 47 marked in evidence.)

(Mr. Doub) It is dated June 2, 1961 to Harry Adelberg, Esq., Maryland National Bank Building, 10 Light Street, Baltimore, Maryland.

"Dear Harry:

"Pursuant to our telephone conversation, I am enclosing herewith Declaration Summons in the local bank matter.

"Personal regards,

/s/ Thomas F. Johnson."

By Mr. Doub:

Q. Now, did that relate to the summons or the suit that had been filed on the Dranow treasury note? A. Yes, but I might say to you this was not my first introduction to the matter.

Q. Yes, but I am coming to that. A. Yes.

Q. Congressman Johnson then referred to you for handling the suit that was brought by someone named [3065] Marcus, I believe. A. Jules Marcus.

Q. Who claimed to be the original owner of that treasury note for $100,000? A. Yes, sir.

Q. And did you thereafter handle that suit until it was settled? A. I did, sir.

Q. And do you know what amount was paid in settlement of his claim that it had been stolen before it had been negotiated and sold to First Continental? A. Well, I settled the case for $12,500. But let me say this to you, Mr. Doub, there was work in this matter prior to this letter and I call that to your attention for whatever it is worth.

Q. Did you have any discussions with Mr. Johnson with respect to the claim that lawyers for Mr. Marcus had asserted prior to the institution of this suit? A. Well, let me reverse the order if I may. My first introduction of the matter was when Bill Robinson came to my offices with a letter from Messrs. Kardy and Brannam, making demand upon the First Continental Savings and Loan Association. Immediately following that, I received a telephone call from Congressman Johnson in the matter.

I did not know at this time he had been active in it or for that matter, had referred it to the office. I knew immediately he had after I had spoken to Robinson.

I might say this, that because of the first introduction for Robinson, I was not clear in my own mind as to actually who had referred the matter to my office. But when I checked my file, I find that prior to the suit, I had written the Congressman about the letters and correspondence. He had replied to me. We had discussed it on the telephone.

Apparently, he had engaged, or caused someone to engage in some research in the matter. I think I got his research results. I did not use that. I mean, we read it and then probably, because of the same caution that one would exercise in practice, I put my own men to work on the question of research.

But, in any event, this was a suit that was finally referred to my offices by Congressman Johnson. It was a suit filed in Montgomery County. We filed answers and defenses

and immediately, coincidental with the filing of the answers, I attempted something that worked. We filed a petition to remove the case to the U. S. District Court. It was removed to this court and it was in this court. As a matter of fact, I believe the Court will recall that I had some conversations with him about this particular case. But, in any event, as the case progressed, I do not think I engaged in further conversation with the Congressman about it except casually and I would say that one of the conversations was that we had with him, it never came into being "before you fix a fee in this case, consult me in it—so it is worth a substantial fee if you get the result that you think you can get," or some such language.

Q. Do you recall in August, 1961 Mr. Johnson asking you to send him copies of some depositions which you had taken? A. Yes, we took depositions in the Marcus case of Jules Marcus in New York City on August 9, 1961. Some time after that I would say that we probably did not get the depositions for a week or two, but when we had received the depositions, I had received a call from Congressman Johnson telling me he would like to have them. I do not know what use he wanted to make of them but I referred them to him.

I mailed them to him or delivered them to him. I just do not remember but he got them.

Q. You testified at the outset of your testimony yesterday afternoon that Mr. Johnson referred business from time to time—legal business, to you? A. Yes, sir.

Q. Do you recall a matter which he referred to you in 1960 involving some persons named Calhoun? A. Oh, that was a tax case. Messrs. Wilgus and Calhoun were at that time engaged in the Acme Poultry business outside of Snow Hill, Maryland. They were involved with an income tax—

(Mr. Doub) I am not going to go into this.

(The Witness) All right, sir.

By Mr. Doub:

Q. I am going to ask you one question. Did you send, after the fees were paid, legal fees due, send Mr. Johnson a check dated April 3, 1961 for $1,000 as his share of the fee your office had earned? A. I did, sir.

Q. That legal matter had nothing to do with the matters involved in this case? A. No, that was one of the many matters that we may have interchanged and I might say that most of the legal matters flowed from Congressman Johnson to my office. I did not have too many matters on the Shore.

(Mr. Tydings) You mean you did not refer him many matters. He referred them to you?

(The Witness) Principally.

By Mr. Doub:

Q. Do you recall being at The Woodner Hotel on a late afternoon of October 23, 1961? A. I recall being there very well, but I do not recall too much about it. On October 23, 1961, a client and I had business in Silver Spring near Washington. We visited over there. We were engaged in a conference involving a business matter relating to the client. A day or two days before Robinson had been in my office and told me that Congressman Johnson was leaving the country on the 24th of October. So, I called him from Carl Friedman's office where we were engaged in negotiations and discussion, wishing him a good trip, and I don't know whether he was visiting Europe or going around the world but in any event, it was a trip abroad.

When I called the Congressman, he asked me if I would mind picking him up and carrying him to Baltimore. I was not driving my own car. My client, a Frederick Fisher, had his car with him. I asked the client whether he would mind and he said, no. I had to tell the Congressman I did not know when I could pick him up. It would depend entirely upon the time the conference ended.

He indicated that he would be ready at about six o'clock and I thought that was perhaps all right. We finished about five-fifteen or five-thirty, and we drove from Silver Spring—

Q. First, did you agree to meet him somewhere? A. Yes, We drove to The Woodner Hotel and the Congressman was not there. I think Robinson was there. I am not sure whether Mr. Edlin was there, but I know that Robinson was there and some other personnel connected with the Association but frankly, I was anxious to be home. I was irritated at having to wait. I sat at the table in the tavern there or cafe, and had a drink with the other men or some other men and I had to wait for the Congressman and he finally did arrive.

Q. Do you recall specifically whether Mr. Edlin and Mr. Johnson moved over to another table for a short while? A. It is all very vague. I was not paying any attention to them. I know that they sat at another table for awhile. What they were doing, I do not know, and frankly, I was asked whether I remembered much about it. I just do not. I got a vague impression which may or may not be accurate that the Congressman was signing something over there. More than that, I cannot tell you. I do not even know what he was signing. It is all in the intangible.

Q. And Mr. Johnson then did drive back with you and your client to Baltimore? A. He drove back and we brought him to his home near Johns Hopkins University. I forget the address, Canterbury Road.

Q. I show you Defendant Johnson exhibit No. 1 marked for identification and ask you if you received that check from Mr. Johnson? A. I did.

Q. All right.

(Mr. Doub) I offer it in evidence, Your Honor.

(Mr. Tydings) Aren't you going to ask him what for?

(Mr. Doub) Before I offer it?

(Mr. Tydings) I am going to object to your offering it until you have the witness describe what it is for. It is not relevant until we know what it is for. That is, until the jury knows what it is for.

(Mr. Doub) This check has now been identified as having been received, Your Honor. It was marked for identification before and I now offer it in evidence.

(The Court) Mr. Tydings has objected on the ground of relevancy and materiality.

(Mr. Tydings) I have not objected all morning to the way he has been phrasing his questions because we want to get to the facts out even though, in some areas, I thought I could well have objected. I do insist that the rules of evidence be followed now and he identify it and establish its relevancy before it is received in evidence. It is very simple.

(Mr. Doub) Your Honor, the check shows on its face the relevancy. It recites it is a "Fee-First Continental."

(The Court) Let me see it.

(Pause)

Mr. Tydings will have an opportunity to ask about it on cross examination.

(Mr. Doub) Your Honor, I intend to bring it out.

By Mr. Doub:

Q. What was that check for? A. That was intended to be a payment on account of services that we have rendered. At least my office has rendered for First Continental through Congressman Johnson's office.

I might say to you, Mr. Doub, that this is not the first check that we received in that area. We first received two checks. One from the First Continental, both of them—well, two checks on, I think April 17, 1961, each in the amount of $350 and those checks were received directly from the savings and loan associations.

I wrote Congressman Johnson when I got that check, those two checks, and asked him for instructions because they were sent to me without any bill or any request for payment and then as work progressed, I got this $500 check, oh, I think that check should be dated—I received it about July 6. I do not know what it is dated.

(The Clerk) It is dated July 5.

(The Witness) I received it July 6, 1961. Then I got another check, if you are interested.

(Mr. Doub) Well, I am coming to that. I again offer it in evidence.

(The Court) Yes.

(The Clerk) Defendant Johnson exhibit 1 previously marked for identification, now marked in evidence.

(Defendant Johnson exhibit No. 1 received in evidence.)

By Mr. Doub:

Q. It is a check to Harry Adelberg, attorney for $500 date July 5, 1961. It bears the signature of Thomas Johnson and under it "Special Account." On the lefthand side "Fee—First Continental."

Now, I show you defendant Johnson exhibit 2 for identification and ask you what this is? A. You asked me to tell what it was?

Q. Did you receive it? A. Yes.

Q. What was it for? A. This was a check that is dated August 7, and I received it on August 9, 1961, also for services rendered by my office through the Congressmen for the Associations. I might say to you, sir, that during that period of time while we were working, I had written the Congressman a couple of time, discussing the question of fees and what to do about billing, and at the same time I also discussed the question of fees with Robinson. Between the July 6 check, dated July 5, I received it on July 6—between the July 6 check and the August 9 check. I

had occasion to mention to Robinson that I had received the $500 and we discussed it and he told me then that it was his position that he was paying Congressman Johnson for the services rendered by my offices. That is before I received the second check.

I discussed that with the Congressman and I think that is entitled to some explanation. The Congressman and I have always operated on a very informal basis. I never question any remittance that he made to me, and he never questioned any remittance I made to him. If I made a remittance to him, I did not give him a statement of account. I did not indicate to him the fees collected. I sent him what I thought was a fair distribution to him in the case, in a given case, considering his participation or lack of participation and considering the reference.

Q. Did Mr. Johnson seem to handle—

(The Court) I think you had better let him finish.

I thought he was in the middle of an answer.

(The Witness) It was with that view in mind that when I got these checks, I discussed them with the Congressman.

Now, as a matter of fact, you referred yesterday, for instance, to a letter of April 17. In that letter, I acknowledged those two checks that I received from the building association and I discussed that matter and also discussed the Marcus case. I discussed the question of fees. Again at a later time, in a later letter I wrote the Congressman and told him that perhaps we ought to have some discussion of the fees on some basis but this was entirely up to him. These were his matters as far as I was concerned, and he had to tell me what he felt was proper or reasonable.

(Mr. Doub) I offer Johnson exhibit 2 in evidence, Your Honor.

(The Clerk) Defendant Johnson exhibit 2 previously marked for identification now marked in evidence.

(Defendant Johnson exhibit 2 marked in evidence.)

(Mr. Doub) Members of the jury, this is a check dated August 7, 1961, payable to Mr. Harry Adelberg, Attorney, in the amount of $500 and it is signed by Thomas F. Johnson, Special Account, No. 1, and on the left hand side it is written "Legal."

By Mr. Doub:

Q. Is that check in Mr. Johnson's handwriting? A. Yes, sir.

[3076] By Mr. Doub:

* * * * * *

Q. When did you first hear that Mr. Johnson had made a speech in Congress regarding savings and loan associations? A. I knew nothing at all about the speech until sometime in October of 1961 or perhaps even November. It was the latter part of October and I think it was shortly after the Congressman had left the country. It may have been November or the early part of November.

[3077] In any event, I think I read something about it in the Washington Post or I got some reference to it from the Washington Post.

Q. That was something critical? A. Yes. And I then had occasion to call the Congressman's office in his absence to speak to Mr. Buarque. I asked him the—

(Mr. Tydings) Your Honor, I do not want to interrupt but we have had so much hearsay. I realize Your Honor's position, the fact that you have conversations admissible but it is not admissible to prove the truth.

(The Court) I do not think it is material relative to something that happened about the newspapers.

(Mr. Genn) I do not object to comments by the United States Attorney as to things he does not object to. We frequently have done the same thing, when I objected to the hearsay matters he brought in.

There should be no medals awarded to anyone for not objecting. If there are any objections made, that should be done without comment.

(The Court) That is right. Mr. Tydings, if you object to this, I sustain the objection.

(Mr. Tydings) I object.

(The Court) Unless the relevancy, materiality [3078] and competency is shown.

(Mr. Doub) Your Honor, may I say this as to that: As I understood the Government's position on cross examination of Mr. Buarque, the question was as to the preparation of this speech, and in effect, an attack on what he had to say, that he had prepared that speech and no body else had done so, and since they have made that attack, it seems to me that I can now ask this witness what Mr. Buarque told him as early as October.

(The Court) Of course, that is not admissible. Self-serving statements by Mr. Buarque are not admissible here. You put Mr. Buarque on the stand. He was subject to cross examination. The jury will either believe him or not believe him.

Other statements that Mr. Buarque made to an associate are not admissible.

(Mr. Doub) Would it not be significant, though, if he made the same statements, Your Honor, as long ago as October, 1961?

(Mr. Tydings) You mean after he read the critical newspaper articles in the Post?

(Mr. Doub) Yes.

(Mr. Tydings) That would just emphasize the fact it is a self-serving declaration after you are under attack.

[3080] (Open court.)

(The Court) I think it is very doubtful but the objection goes to weight rather than admissibility.

(Mr. Tydings) If he is going to examine him about a newspaper article, Your Honor, isn't the article itself the best evidence?

(The Court) If Mr. Doub examines him about that, he may open up a good many avenues which would otherwise be closed to you but that is his choice.

(Mr. Genn) If the Court please, I am going to object as to this particular line if we are going to get into newspaper articles about this matter.

[3081] (Mr. Doub) I am not going to go into newspaper articles.

(The Court) I do not see how Mr. Doub can avoid that if he is asking the witness to tell about his discussion with another witness about a particular newspaper article. If you object, we will take a poll of the defendants. I was going to overrule the government's objection. Do the other defendants object to the question Mr. Doub is asking?

(Mr. Williams) I would just like to be left out of this, Your Honor.

(The Court) Do you object to it?

(Mr. Genn) I do not think—

(The Court) You have got to object or not object. Yes or no.

(Mr. Genn) Your Honor, I have stated I do object and I do think the conclusions and opinions of newspaper reporters certainly should not be an issue in this case and that is what is involved in newspaper articles.

(Mr. Doub) This is not involved.

(The Court) Well, are you going to say anything, Mr. Robinson?

(Mr. Robinson) No. Your Honor, I neglected to come to the Bench and I am afraid I do not know exactly what [3082] is going on.

(The Court) I do not think Mr. Genn's objection is a good one at this time, whatever it may be as to something which may come up in the future. I overrule the objection.

(Mr. Doub) All right.

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[Tr. 3159-3162]:

THOMAS F. JOHNSON

DIRECT EXAMINATION

By Mr. Doub:

Q. Mr. Johnson, where do you live? A. Berlin, Worcester County, Maryland.

Q. Where were you born? A. Snow Hill, Eastern Shore of Maryland.

Q. And who was your father? A. My father was the late Judge William F. Johnson.

Q. He died when? A. He died in 1961 at the age of 98.

Q. Mrs. Johnson, your mother is still living? A. I am happy to say that she is and she is in court today. She will be 90 her next birthday.

Q. And I believe you had a brother who was also a Judge? A. I did have a brother named Edwin H. Johnson who served nine years as Circuit Court Judge. He passed away in 1951.

Q. You have a sister? A. I have a sister who is in court who is Mrs. George O. Eaton, wife of Dr. George O. Eaton, the Orthopedic surgeon.

Q. You are married? A. I am married.

Q. How many children do you have? A. Four children. I had three by a marriage some years ago. I have one step-daughter, making four children.

Q. How long have you been married to your present wife? A. I think 12, 13, 14, maybe 15 years.

Q. You are as vague as I am? A. Yes.

Q. Now, Mr. Johnson, where were you educated? A. I was in various schools, St. Johns College, Staunton Military Academy first, the University of Virginia and the University of Maryland.

Q. And you studied law where? A. At the University of Virginia and I had one year also at the University of Maryland.

Q. Since graduating from law school and being admitted to the Maryland Bar, where did you practice law? A. In Snow Hill, in Berlin which is on the Eastern Shore and for many years I have had a working arrangement in Baltimore.

Q. What was the first governmental position you held? A. As a state official I was elected in 1934 as State's Attorney for Worcester County.

Q. How long were you States Attorney? A. I served for four years until 1939.

Q. When was the first time you became the Democratic nominee for Congress? A. Well, following State's attorney in 1939, I was elected to the State Senate and I served for 12 years until 1951 in the State Senate.

In 1950 my first contact as a Democratic nominee for Congress.

And I might say, unsuccessful because that was the year that Governor Lane and Senator Tydings and a few of us went down to defeat.

Q. Now, those three were the only persons running in that election on the Eastern Shore, you and the other two? A. There were other candidates but I do not recall the candidates now.

Q. When were you first elected to Congress? A. I was elected in 1958. November of 1958 and took my seat in January of 1959.

Q. And you ran again and were re-elected in 1960? A. I was re-elected in 1960.

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[Tr. 3163]:

Q. Then you ran again in 1962 and you were defeated? A. I was defeated by a very, what I considered, a narrow margin. I think I received approximately 30,000 votes and my opponent 33,000. And that defeat came just three weeks after the indictment in this case.

Q. Now, I want you to turn to your record in the Congress briefly. What were the two most important committees which you served on? A. In my first session I served on the Merchant Marine and Fisheries Committee of which, incidentally, my Colleague Congressman Boykin was also a member.

My second session I was selected for the Foreign Affairs Committee and the second session I served on both of the important committees, the Merchant Marine and Fisheries and the Foreign Affairs Committee.

Q. You were a co-sponsor of the Peace Corps Bill? A. I think I was co-sponsor of many but the Peace Corps was one of the bills that I co-sponsored.

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[Tr. 3164-3166]:

Q. What was your roll call record in the Congress? A. I think I had a very excellent one throughout the tenure in Congress. I would say in the upper ten per cent. That means a very high record of attendance.

Q. Did you practice law when you were in the State Senate of Maryland throughout that period? A. I did.

Q. And did you practice law during the years you were in Congress? A. I continued to do so as many others I think probably sitting in Congress do who are lawyers.

Q. When you were practicing law in Snow Hill and Berlin, did you practice under the firm name of Johnson

& Johnson? A. I did, with the firm my father originated in, I think, 1883 or 1885. And I continued under that firm but approximately 1939 I moved near Berlin and opened an office in Berlin and most of my time following 1939 was in the Berlin Office and not Snow Hill.

Q. Did you continue the firm name of Johnson & Johnson, however, in connection with the Snow Hill office? A. I did.

Q. And who were the partners, who have been the partners in that firm? A. Well, for the last year I was the sole and only partner. In the inception why, it was William F. Johnson, my father and my brother Edwin H. Johnson; later there were the three, including myself, who were partners. Following my brother's death, after he had been on the bench, and inactivity of my father, I was the only remaining member of the firm.

Q. You have been the sole surviving member since when? A. Oh, I would say possibly the last five, six, seven, maybe ten years.

Q. Now, why did you continue that firm name when you were the only partner left? A. Well, it was a great deal of sentimental reasoning, because father, say, did not pass away until the last of 1961 and he was very attached to his old firm, and I remained more for the sentimental reason than anything else, and because of him.

* * * * * *

[Tr. 3184-3204]:

Q. Mr. Johnson, when was it that you first met Mr. Edlin and Mr. Robinson? A. That was in the early months of 1960.

Q. And in what connection did you meet them? A. Starting in 1938 I was interested in a bridge construction known as the Assateague Bridge. That was to connect the mainland with Assateague Island.

There had been a group of land owners as well as citizens in Worcester County who were interested in a bridge.

They were having trouble to find financing. In early 1960 Mr. Marshall Diggs or his associate introduced me to Mr. Edlin, as underwriter for certain lending institutions.

Q. He was introduced to you as an underwriter for certain financial institutions? A. The bridge group headed by Mr. Marshall Diggs, and there were several very prominent citizens who constituted that bridge group, and they met with me in Washington, saying that a Mr. Edlin had discussed the matter with them and they would bring Mr Edlin in, and they identified him as an underwriter for several lending institutions.

Q. Now, at that time was the Assateague Island Bridge group interested in private financing to finance the construction of the bridge? A. It was private financing. At that time the State had not considered the feasibility of using public funds for the bridge. It was entirely private. And as a result we had several conferences with Mr. Edlin and with Mr. Robinson.

Q. And the subject was a loan to the bridge company? A. Yes, I recall the first discussion was for a $1,700,000 loan. That was not only for the bridge, but tying in with the bridge was for sewer and water and some roads on the Island, and as collateral they wanted 500 mortgages from property owners. Later that was revised.

We had several conferences and the last suggestion was that there would be 4,000 mortgages given to secure the loan, but those negotiations continued until, I would say, August of 1960.

Q. Now, this was the loan sought by the Assateague Bridge Corporation that Mr. Diggs was President of? A. I was one of the counsel for the Assateague Bridge Company. I had been approached for legislation after I had served my term in the Senate. I had made a search and told them there was no need for a legislative act; that the Public Service Commission had jurisdiction, so I was there as attorney.

Q. I don't want to go into that. A. All right.

Q. How many meetings would you say that you attended where Mr. Robinson and Mr. Edlin were present from the time you met them in early 1960 to the time when these negotiations for a loan were concluded?

(The Court) You mean about the bridge matter or about other matters?

(Mr. Doub) We are talking about this matter right now, Your Honor.

(The Witness) It is not clear, as the Judge says. You mean about the bridge matter?

By Mr. Doub:

Q. The bridge matter. A. I would say that I had perhaps three meetings with Mr. Edlin and possibly four or five with Mr. Robinson.

Q. And when, exactly, were these negotiations for the bridge loan terminated? A. I put August. It could have been later, but during the fall there became a public interest, and the Governor intimated that he would put in his budget sufficient funds for a public bridge, and following that—

Q. I don't want to get into that. Let me ask you a leading question, which Mr. Tydings may object to.

As a matter of fact, didn't a savings and loan association with which Mr. Edlin was connected make a written proposal for a loan, but the terms were so stringent the group turned then down, and that was the end? A. Well, in April I received a copy of a letter to Mr. Diggs setting forth what the terms would be as to a loan, and I think that was revised so we had possibly two or three proposals. But as you state, they were rather severe terms because of the 4,000 mortgages.

Q. Now, Mr. Johnson, prior to June 20th, do you recall any conversations you had with Mr. Robinson about Mr

Robinson's interest in politics? A. Yes. I think Mr. Robinson visited the property and I had occasion to be with him, as I state, possibly five or six times, and he told me that he had been interested in politics in Florida, and I think he had taken some part in political campaigns in Florida, and he was interested in my campaign. He felt that I should be returned.

Q. That is, you were going to run for re-election that year? A. In 1960 I had my former opponent Congressman Miller who opposed me.

Q. Now, I show you a check dated June 20, 1960, in the amount of $500 payable to your order, signed by W. L. Robinson, Government's Exhibit No. 69, and ask you if you received that check, and I will call on Mr. Tydings to produce the original letter from Mr. Robinson to enclose that check, which the Government did not offer in evidence. A. I mean the letter from Mr. Robinson to me.

(Mr. Doub) That is right.

(Mr. Tydings) Your Honor, any letters or anything which the Congressman turned over to us or anybody else, all Mr. Doub has to do is ask us in advance and we will give them to him, and we wont have this unnecessary delay. I don't think it is quite proper to make a big ceremony in front of the jury, when he can do it in the proper way and ask beforehand.

(Mr. Doub) Mr. Tydings, you have a monopoly on what is said before the jury.

(Mr. Marion) Mr. Doub, you also know that we could not call either the receiver or the sender of that letter to the stand and introduce it.

(The Court) It is a fact the Government did not put it in because they couldn't have gotten it in, Mr. Doub, over objection.

(Mr. Doub) Your Honor, we wouldn't have objected to it. We wanted it in.

(The Court) All right.

By Mr. Doub:

Q. Now, I show you— A. I am holding this check. I have answered the question. Shall I give it back to you?

Q. Now, I show you a letter dated June 20, 1960, from Mr. Robinson to you and ask you if you received that letter? A. I did.

Q. And did that letter enclose this check, dated June 20, 1960, for $500? A. I did.

(Mr. Doub) I offer the letter, Your Honor.

(The Clerk) Defendant Johnson's Exhibit No. 49 marked in evidence.

(Defendant Johnson's Exhibit No. 49 was received in evidence.)

(Mr. Doub) This is on the letterhead of W. L. Robinson, Attorney at Law, Miami, Florida, June 20, 1960, addressed to Thomas F. Johnson:

"Dear Congressman Johnson:

"The enclosure is with my best wishes for your success in your present campaign for re-election, and I look forward to seeing you on my next visit to Washington. My present plans are such that I expect to be in Washington Wednesday and Thursday of this week.

"Thanking you for your past cooperation, I am

"Very truly yours,

"W. L. Robinson."

By Mr. Doub:

Q. Now, Government's Exhibit 69, which you have identified as the enclosure referred to in that letter from Mr. Robinson to you, a check for $500, contains an endorsement. I would like you to read that to the jury. A. It is an endorsement on the back of the check: "Pay to the order of

Russell O. Hickman, Luncheon Treasurer," signed Thomas F. Johnson. That is in my handwriting, and under that "Deposit to the account of Russell O. Hickman, Luncheon Treasurer," which I can identify as Mr. Hickman's handwriting.

Q. Now, did you have any discussion about this campaign contribution with Mr. Robinson when he came to Washington, and in that connection I call your attention to the fact of his covering letter which said that he was going to be in Washington shortly A. I did. I think I addressed him as Mr. Robinson, as the letter indicates. We were not at that time on the first name speaking. He called me Congressman.

He arrived, and I thanked him for the contribution. I told him that I had not named a campaign treasurer; that we were having a luncheon, Congressional luncheon in Baltimore, on July 19, a fund raising. Would it be agreeable to have the check used for the purpose of tickets at that luncheon? And the treasurer of that luncheon was Mr. Hickman and the chairman was Mr. James Campbell, and he stated that it would be agreeable.

Q. Now, you stated that you endorsed the check over to Mr. Hickman, the treasurer. Do you know of your own knowledge that the proceeds of that check were deposited by Mr. Hickman in his political account? A. I do.

(Mr. Marion) I don't believe there is evidence to that effect, Mr. Doub.

(The Witness) I do have personal knowledge because I asked him after the charge against me that I had received a $500—I won't say what, bribe or what.

(Mr. Doub) We can't go into that.

(The Court) Mr. Hickman can go on the stand and testify he deposited it.

(The Witness) I do have personal knowledge, too.

By Mr. Doub:

Q. Let me ask you this: Did all or any part of that check come to you? A. Mr. Doub, I received not one penny of that check. It went for my campaign along with the campaign of John F. Kennedy and Lyndon Johnson, and that is shown by the report filed in Snow Hill.

Q. Now, Mr. Johnson, I show you Defendant Johnson's Exhibit No. 11, constituting the Congressional Record for Thursday, June 30, 1960, which contains a speech on page 14,184, and ask you if you delivered that speech or caused it to be inserted in the Congressional Record, which would have the same effect? A. Yes, sir, that is the speech that was either delivered or submitted to the Clerk.

Q. By you? A. By me on June 30, 1960, after the close of all other business by the House.

Q. Now, the first sentence of this speech states:

> "Mr. Speaker, on the 27th of May there appeared in the Financial Section of the Washington Star an article by one Donald B. Hadley, with the shocking black headlines 'Savings and Loans Urged to Warn Public of Maryland Phonies."

Your speech then proceeds to criticize and answer that article in the Star.

Now, when did you first see the article in the Star published May 27, 1960? A. Mr. Doub, I don't know when I first saw it, the date. I know Mr. Buarque called the article to my attention, but when I do not know.

Q. In other words, it had been some time after the 27th then? A. I presume so, because I couldn't guess what date that I first knew.

Q. Now, where do you recall meeting Mr. Heflin? A. After Mr. Heflin testified, I recalled that I had met him once at the Congressional Hotel.

Q. Is that at a luncheon? A. That was at a luncheon

that Marshall Diggs wanted to discuss the bridge matter, and I did not know Mr. Heflin was there until he testified, and I would accept his word he was there.

Q. Now, who were present at that—who else was present at that lunch? A. I would say, I am very hazy on who was there, but I would accept the testimony that he was there, Mr. Edlin— I think Mr. Rains testified he was there, and, Mr. Doub, I don't know who else.

Q. In any event, did you meet Mr. Heflin there? A. I could have because I had no impression because we are meeting constantly every day delegations, and it made no impression.

Q. Now, do you recall thereafter in June 1960, Mr. Heflin coming to your office to speak to you? A. I do remember his being in my office.

Q. And tell the jury of your conversation with him, Mr. Johnson? A. I don't know the date that Mr. Heflin came in the office. He had a copy of the Washington Star. The same article that had been shown to me. He stated that he thought it was very unjust. It was unfair reporting.

I asked him what his connection was with any savings and loan. He told me he was P.R. man for the Institute of the savings and loan independents.

Q. What do you mean by "P.R."? A. Public relations man.

I asked him about his organization. He told me that he was located on Connecticut Avenue. They had an office. I asked him whether he represented any Maryland institutions. He said yes. I asked him how many institutions. I don't recall, but I think he said two, three or four, but he continued to say they had a drive on. They expected to have a large number of members. He was indignant over the speech and thought that something should be done about it.

I told him that matters of that sort was left to my ad-

ministrative assistant. He then was asked to see Mr. Buarque. In fact, I took him out to the other office, introduced him to Mr. Buarque and told him to discuss the matter with him. That is the last time that I saw Mr. Heflin until he was in court, and I wouldn't have known him.

Q. Was Mr. Robinson with Mr. Heflin? A. He could have been, I don't recall. He could have been with him, but, as I say, it is an instance that he could have been to the office only a few minutes, because a Congressional office, particularly ours, there was not opportunity but for very short conferences. We have a tremendous demand of constituents, starting in the morning all day, and conferences are short.

Q. Now, thereafter did you have any conversations with Mr. Buarque about making a speech replying to the article in the Star? A. I do recall following—whether it was that day or days following, that Mr. Buarque said that he had talked with Mr. Heflin; that Buarque thought that it should be answered; and that he would prepare some remarks for me for the floor.

Q. Now, have you any information that Mr. Buarque saw any copies of any speeches that might have been sent to him by anybody else? A. Mr. Doub, he didn't show me any. I had no knowledge of any, and to me the whole incident was completely forgotten until this episode.

Q. Now, did there come a time when he submitted to you a speech which he had drafted or said he drafted? A. He came into my office and had a prepared statement. I don't recall now when that was, but it must have been before June 30th.

Q. It had to be? A. It had to be before June 30th. We had a discussion, and I recall that Mr. Buarque felt that it would be a good political move. I had the election. We were thinking about 1964, and thought we could get some publicity from it. As it turned out, there wasn't much response to the speech.

Q. There wasn't any publicity either, was there? A. No. We expected some, but nothing came from it, not in the right direction anyway.

Q. Mr. Johnson, did Mr. Edlin ever ask you to make that speech? A. Absolutely not.

Q. Did Mr. Robinson ask you to make that speech? A. Absolutely not.

Q. Were you promised anything by anyone if you would make the speech? A. Absolutely not.

Q. Did you know of any advantages that might accrue to you aside from the political ones you mentioned? A. Absolutely none.

Q. Did Mr. Edlin or Mr. Robinson hold out to you any inducements if you would make that speech? A. None. I don't think I even saw Mr. Edlin during that period of time, or Mr. Robinson, except for the occasion when he came in about the bridge matter, and I think that was only about a few minutes conversation.

Q. When you discussed with Mr. Robinson his campaign contribution to you did he refer to this speech at all A. Mr. Robinson never mentioned this speech or any reference to it, and as far as any compensation, I want it distinctly understood there was no promise and there was nothing received, and I resent any inference of it, and Mr. Tydings knew or I told him before the indictment exactly the truth of this.

(The Court) Do you have any more questions, Mr. Doub?

(Mr. Doub) Would Your Honor indulge me just a moment?

(The Court) All right.

By Mr. Doub:

Q. You have testified that you did not have any meetings with Mr. Edlin or Mr. Robinson other than the fact

that they were at that luncheon on the Assateague Bridge matter with Marshall Diggs and perhaps Mr. Heflin. Do you recall what month that luncheon was in? A. I don't recall. Mr. Heflin, I think, testified he thought it was April of 1960. It may have been May, but I do not recall.

I might add, at that time one savings association did not mean any more to me than another.

Q. At the time you made that speech, did you have any connection of any kind with any savings and loan association? A. None whatsoever. I was not a depositor, shareholder or represented or had any connection, and I don't even know that I knew the name First Continental, and I didn't know First Colony, but reviewing my files I notice in April their name was mentioned in the proposal for the loan.

Q. The Assateague Bridge loan? A. That had slipped my mind, but I had no knowledge of them.

Q. I show you, Mr. Johnson, Government's Exhibit No. 1, being a check of First Continental, dated July 5, 1960, in the amount of $168,91, payable to the order of the Congressional Record Clerk. Will you tell the jury when you first saw that check? A. I presume it was somewheres on or about July 5, 1960.

Q. Now, it is undisputed that that was a check for the cost of 10,000 reprints? A. That is what it so states.

Q. When did you first learn of any order by Mr. Heflin or his Institute for reprints? A. I would not say that Mr. Buarque did not mention to me that there was requests for reprints, but I have no recollection of anything pertaining to reprints of the speech of June 30th until the check was brought to me for endorsement when I asked what it was for.

Q. And that was brought to you by whom? A. In the office there is a Mrs. Kiernan who looks after all reprints, and I assume she is the one who brought it to me for en-

dorsement over to the printers, because the speeches are not printed at Government expense.

Q. Does that document bear your endorsement over to the Government Printer? A. Yes, under the rules of the House, a check has to pass through a Congressman.

Q. That is your endorsement? A. That is my endorsement over to the Public Printer.

Q. Now, I show you Government's Exhibit No. 3, being a check of First Continental, payable to you, in the amount of $161.39, dated August 13, 1960, which would have been about six weeks after the speech, and ask you what that check was for, or when you first saw it? A. That was in the regular course of the office, during August, on or about August 13th, for reprints, and that was endorsed over to the Public Printer by me.

Q. That is your endorsement? A. My endorsement is on it.

Q. Just going back to that speech, I forgot to ask you this, Mr. Johnson, when Mr. Buarque presented his final draft of the speech to you, did you make any changes in it? A. I think possibly a few. I am inclined to have rather conservative speeches, and I am sure I did strike some parts of the speech.

Q. Before you actually delivered it? A. Yes.

Q. Now, did anyone discuss with you orders for reprints by Mr. Heflin or his Institute? A. No one whatsoever, unless, as I say, Mr. Buarque had mentioned it, which I do not recall. He could have said that they wanted a request for reprints, but it is so routine that I just don't recall.

Q. In any event the orders were not directed to you. In other words, Mr. Heflin did not call you about them? A. Mr. Heflin never talked to me about any reprints.

Q. Did you ever see Mr. Heflin after he came to your office in June 1960, when he expressed the hope that you

would answer this blast? A. I think I testified that from that occasion until he was in the court the other day was the first time that I had seen him since that date.

Q. Did you have any knowledge of the distribution that was made of the reprints for your speech? A. I knew nothing. I did not know they were distributed. If they were, I was not consulted but usually Congressmen or Senators hope they will be distributed because that is the way of publicizing their speeches but I was not consulted. No one talked to me.

Q. When you did hear that this large number of reprints had been ordered, were you pleased or displeased? A. If I had heard it following the speech, I would have been pleased, but I did not hear anything about it until this case started and I am not so pleased particularly about any of it.

Q. You knew about it when you received—when you endorsed those checks over to the public printer? A. Yes, but it is routine and I did not know at that time very much about it.

Q. Now, Government counsel has introduced in evidence the order of your office addressed to the Public Printer for reprints of this speech which is signed by Mrs. Kiernan whom you testified was a secretary in your office.

Did you or Mrs. Kiernan personally order those reprints from the Government Printing Office? A. Mr. Doub, I did not but the responsibility of the office was mine. Mrs. Kiernan was given the authority when she first assumed her work with me four years before, now four years before, that she was in charge of reprints, and according to the evidence there, she is the one who signed for the reprints.

Q. Do you know anything about the caption that was put on the speech in the reprints? Were you consulted as to that? A. I know nothing about it. If Mr. Buarque mentioned it to me, I do not recall. I have no information or knowledge of it whatsoever.

Q. Do you remember, Mr. Johnson, whether some reprints of this speech were kept in your office? A. They may have been kept in the file but I do not know where the public could have seen them, or else I would have seen the reprints. Because I did not see a reprint until I think this matter came at issue. Yet I am told they were in the office.

Q. Now, in the outer office where visitors came and constituents came, did you maintain a table on which was printed material for such visitors? A. Oh, yes, I think every Congressional office has—we have farm books and we have all types of printing matter there that we feel may be of help to constituents.

Q. Do you recall whether any reprints of this speech were kept there? A. Absolutely not and I know that Mr. Buarque would not have because he is very careful in running the office, and I would know what he kept out and certainly I would have seen it.

Q. You would have seen them if it were there? A. Yes.

Q. Did you ever see any marked copies of a reprint of your speech where any material or sentences were underscored or underlined? A. The first time I ever heard of a marked copy or have seen one was in this court the other day.

Q. Do you recall a meeting with Senator John Clarence North of Easton about a week after you made the speech? A. I think it was a little more than a week. It was during July of 1960, I believe Senator North came to my office and with him was a Mr. deFord, and the other gentleman was Gotschalk. They were representatives of the Maryland Savings and Loan League or the Federal representatives.

Senator North stated they were there in reference to this speech and wanted to know whether I intended to have any further remarks on the floor of the House.

I told Senator North that I had no interest whatsoever

in savings and loans. That I had made the speech which I felt was an impartial, fair speech in defense of hundreds of institutions in Maryland that had enjoyed a good reputation. They should not have been slandered as "phonies," those savings and loans; having made that speech I had no idea of continuing further.

The matter was closed.

One institution meant no more to me than another. They thanked me and said they were happy to hear that I had no further interest and after a few pleasantries, they walked out.

(Mr. Doub) Your Honor—

(Mr. Tydings) Mr. Doub, would you identify who Mr. North is?

(The Witness) That is John Clarence North, State Senator for Talbot County.

(Mr. Tydings) On the Eastern Shore.

(The Witness) Yes. A very able and pleasant person.

* * * * * *

[TR.3256-3258]

Q. Mr. Johnson, in January, 1961, did you have a discussion with Mr. Edlin and Mr. Robinson or with one of them with respect to a new fee arrangement? A. I did.

Q. And will you tell the jury what was agreed? A. Well, the meeting was early in January of 1961, and they asked that they confer with me in respect to a new matter dealing with the Dranow case which has been spoken of before.

Q. I do not want to get into that. I want to stay for a moment on this. What was the new fee arrangement? A. At the conference they stated that they agreed on a monthly retainer of $800 a month.

Q. When was the first meeting with respect to Dranow treasury note in the amount of $100,000 in January of

1961? A. I do not recall but it was the very first part of January, 1961.

Q. And do you recall specifically any particular meetings and who were present about it? A. Mr. Robinson had spoken to me, also Mr. Edlin. They gave me some information in respect to the Dranow matter. I told them that I desired further information. It was suggested that a Mr. Goldman inFlorida may supply that and he was requested to come to Washington to give that information to me.

Q. Do you recall a meeting in your office with Mr. Edlin and Mr. Robinson and Mr. Goldman when they gave you the facts with respect to the matter? A. I do.

Q. Did you dictate a memorandum in their presence from the facts which they gave you at that time? A. I did.

Q. Do you have it there? A. The memorandum bears no date but it was at the meeting at the office.

Q. From what file did that come? A. I have it marked "The $100,000 note."

Q. Would you like to tell the jury who was present when you dictated this memorandum? A. To the best of my knowledge, it was Mr. Edlin, Mr. Robinson, Mr. Goldman, and I think they were the only ones.

Q. All right.

(Vol. 27 [3261]) By Mr. Doub:

Q. Now, Mr. Johnson, were you asked to make a trip to New York with respect to the legal problems involved in the claim of a Mr. Marcus for this treasury note or its proceeds? A. Yes.

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[Tr. 3261-3267]

Q. Who asked you to make the trip? A. I do not recall whether Mr. Robinson or Mr. Edlin. I do not recall which —or both.

Q. You did go to New York and you had a meeting with whom? A. With Mr. Arthur Spielberg, an attorney.

Q. And who was present at that meeting? A. Mr. Spielberg, Mr. Edlin and Mr. Robinson and myself.

Q. And what was discussed there? A. It had come to the attention of the First [3262] Continental Savings and Loan that a Mr. Marcus of New York had made claim to the proceeds of a $100,000 note, a note which had been discounted on a Bethesda Bank in Maryland.

In view of the possible claim against First Continental, I was asked to discuss with Mr. Spielberg the question first of jurisdiction, venue, and then the case, whether or not the case would be likely to be disposed of in the State of New York since the note has allegedly been stolen in New York.

Q. Didn't you mean that you were interested in what law would apply, whether it was the New York Law or Maryland Law or Florida law?

(The Court) He said he was discussing jurisdiction. He may have also discussed the other.

(The Witness) Yes, we discussed the question of the declaratory judgment as to the application of the law. The Negotiable Instrument Act of New York.

I wanted to get Mr. Spielberg—to get from him exactly what their Act contained as to the negotiable instruments, passing of title to a note of this nature.

We had a very lengthy discussion in New York at the Waldorf Hotel.

By Mr. Doub:

Q. Now, Mr. Spielberg testified it was agreed that, if there was litigation in New York, he would handle it, and if there was litigation in Maryland, you would handle it. Do you have the same recollection? A. Yes, we did not know whether first, the suit would be brought; secondly, if there

was a document suit, whether it would be in Maryland or New York and I was to handle it if in Maryland.

Q. And later suit was brought in Maryland? A. It was brought.

Q. And you referred it to Mr. Adelberg for handling? A. Finally, after some months.

Q. And you did not handle it, yourself? A. I did not handle the final settlement which was settled for $12,500.

Q. That is the claim of the alleged owner? A. Of $100,000.

Q. Now, I show you Johnson exhibit 30, being a letter from Mr. Spielberg dated January 31, 1961; in the first sentence he says, "in accordance with the conversation which I had with you last Friday, a review of the authorities was made" and then he discusses the law. Is he referring to the meeting which you have just described when he refers to the "conversation with you last Friday"? A. That is true.

The meeting at the Waldorf Hotel which was on January 27, 1961.

Q. And did you receive this letter? A. I did, together with enclosure.

Q. And what was the enclosure? A. The enclosure was a two-page memorandum setting forth the New York Negotiable Instruments Act.

Those portions or sections that dealt specifically with our problem.

Q. And there are also references to New York Legal decisions? A. Yes, and Mr. Spielberg was rather positive that the so-called "raincoat" case would be applicable to the case at issue. We discussed that at some length, and he later sent to me the letter with the memorandum.

Q. Did you have a meeting on the following day in New

York on any other subject? A. I did but I did more work on this Dranow matter, too.

Q. Tell the jury what you are referring to? A. Well, following back to Maryland, the question was whether or not the suit was likely to be docketed in Maryland.

I did have an opportunity to review our Negotiable Instrument Act and I recall I did some research, I believe, under Trover, and finally, in March or April, Mr. Adelberg joined in the case and we made a very extensive legal research. That research, for the most part, however, Mr. Adelberg did. Mine was rather superficial.

Q. Now, Mr. Johnson, the day after your meeting with Mr. Spielberg in New York, what did you do? A. I was asked by Mr. Robinson to attend a meeting, a director's meeting of the Nationwide Savings and Loan Association.

Q. Is that the association that you referred to on Thursday when you were talking about the various attempts that you had made to locate a savings and loan association in Worcester County. You mentioned a Nationwide. A. I did. As I say, I was not a stockholder or director of Nationwide but whenever I had the opportunity, I always try to get something for Maryland and I asked them to locate one of their offices in my district in Worcester County.

Q. I show you what purports to be an original letter from M. A. Seymour, counsel, to Mr. Robinson dated January 30, 1961, re Nationwide Savings and Loan Association, and ask you if Mr. Robinson sent that letter to you upon its receipt? A. He did.

Q. Right after it was written? A. Soon after it was written, yes.

(Mr. Doub) I offer this letter, Your Honor.

(The Clerk) Defendant Johnson exhibit 55 marked in evidence.

(The Court) What is the date of it?

(The Clerk) January 30, 1961 to William L. Robinson from the firm of Nova & Seymour, New York, 120 Broadway, New York.

(Defendant Johnson Exhibit 55 marked in evidence.)

(Mr. Doub) Now, this letter states.

"Dear Bill:

"I have prepared and enclose herewith the necessary resolutions and signature cards to open accounts in:

"1. The First National Bank of Snow Hill,

"2. The Exchange and Savings Bank of Berlin, Maryland.

"3. The Gotham Bank."

Now, at that meeting in New York, had you requested the persons associated with Nationwide Savings and Loan Association if they would open a branch in Worcester County? A. I did and I was very hopeful that they would open a branch in Worcester County.

* * * * * *

[Tr. 3268-3291]

Q. Mr. Johnson, is there any comment you would like to make as to what you said in that meeting in New York? A. At the meeting I told them that I would like for them to consider locating a branch on the Eastern Shore of Maryland. We were badly in need of capital. It was an area that needed funds for building and home improvement.

At the meeting a resolution was passed designating the Exchange Bank of Berlin, First National Bank of Snow Hill as depositories in my district. I was asked to see both banks, arrange signature cards. I do not recall as to the First National Bank of Snow Hill but I did contact Mr. Raymond Davis, who is Cashier of the Exchange and Savings Bank, the one who testified here some weeks ago, and at my request, he sent to New York the necessary signature card applications.

Q. Mr. Johnson, who paid for your travel expenses to and from New York for yourself and Mrs. Johnson on that occasion? A. That is for the meeting you speak of. The Dranow—with Arthur Spielberg and this—

Q. Yes. A. I paid personally, all of my traveling expenses to and from New York.

Q. Who paid for your hotel bill? A. I think First Continental Mortgage or First Continental paid—First Continental Savings, paid for that hotel bill, one or the other.

Q. Now, Mr. Johnson, let us turn to the Cassell matter, which I understand was referred to you in early 1961.

(Mr. Tydings) Your Honor, why doesn't he just ask the Congressman what was referred to him in 1961 instead of suggesting?

(The Court) I was hoping we could get somewhere by leading questions to save time but if Mr. Tydings objects to leading questions, he may go back to—

(Mr. Tydings) That was not even a leading question. That was a statement.

By Mr. Doub:

Q. I show you what purports to be an original letter from Mr. Robinson to you dated February 3, 1961, and ask you if you received that letter? A. Yes.

(Mr. Doub) This has been seen, Your Honor, by all counsel and I offer it in evidence.

(The Clerk) Defendant Johnson exhibit 56 marked in evidence.

(Defendant Johnson exhibit 56 marked in evidence.)

(Mr. Doub) This is a letter on the stationery of Mr. Robinson, Attorney At Law dated February 3, 1961, addressed to Mr. Johnson.

"Dear Tom:

"I enclose herewith one copy of a proposed loan agreement to The A. I. Cassell Land Corporation, together with a copy of one of the mortgages and one of the notes for your examination. I believe, from the Loan Agreement, the reason for this loan is obvious; namely, that a lien has been filed against the subdivision, which must be released in order to continue the sales of lots in the subdivision.

"At this particular time we do not desire to record additional mortgages against the Cassell property, and according to our accountant the bonds that we will post with the surety company will be carried on our books, until or unless some demand is made against these bonds, as a withdrawable deposit as would be done with a gas company or electrical company deposit. I would appreciate your opinion of these documents at your earliest possible convenience.

"Thanking you for your many courtesies and your past cooperation, I am,

"Very truly yours,

"W. L. Robinson."

By Mr. Doub:

Q. Now, Mr. Johnson, will you tell the jury just what was this matter that Mr. Robinson referred to you by his letter of February 3, 1961? A. It dealt with the development in Calvert County known as Chesapeake Heights On the Bay, which has been referred to in the testimony as the A. I. Cassell Company. That loan was made during June of 1960. It aggregated, I believe, some $1,600,000. In the construction period which continued, a company known as the H. V. Humphries & Sons Company who were contractors in Southern Maryland, did work on the development and not being paid, there was some dispute and through a local attorney they filed a mechanics lien, which was against the entire subdivision. And, as a result, there was no further sales that could be made with that lien on the subdivision.

Q. Now, this $1,600,000 loan had been made in June, 1960, had it not? A. Yes, I had nothing to do with the loan that was made.

Q. On the original loan? A. No.

Q. You had nothing to do with the preparation of the original papers such as the loan agreement and mortgage and so on? A. No, I had absolutely nothing to do with the original papers.

Q. And the problem here was how to lift the mechanics lien? A. Yes, Mr. Robinson came in and he did not understand the effect of a mechanics lien. He told me in Florida they were not troubled under the circumstances. They had some other procedure.

I told them that it was serious to the degree that certainly there could be no further sales in the subdivision with this lien.

He wanted to see a copy of the mechanics lien law and more information which was provided for him. Then it came to a point of negotiating with the attorney for the settlement of the H. V. Humphries claim. It was a claim of $19,000.

I did not negotiate as to the settlement of that. Mr. Robinson reported to me that a Mr. Harry Bowen, I believe, is the one who was handling that in Calvert County, that it would be lifted if there could be filed in the proceedings a corporate bond in the amount of $20,000. If that bond were filed, then they could proceed with the negotiation for a settlement of the claim.

The problem with Mr. Robinson was that Mr. Cassell who developed the A. I. Cassell Company, was the one who was the head of that development, and wanted to borrow $20,000 from First Colony Savings and Loan Association in order to place a corporate bond or have a bond placed in the proceedings.

So Mr. Robinson talked with me. He had in mind first one

mortgage. That for reasons I don't recall, he found not feasible. I suggested individual mortgages. Mr. Cassell could not give a first mortgage for security.

Mr. Robinson went over the portfolio to pick out what mortgages were outstanding to determine which mortgages could be placed as a second mortgage and still be within the advertised percentage loan limit of that institution. It was determined that there would be five mortgages prepared to secure this $20,000.

Q. You mean they would be mortgages on five separate lots? A. Five separate parcels of real estate. I did not prepare the mortgages. Mr. Robinson prepared those, brought those to me. He was greatly concerned as to the effect of the second mortgage.

He insisted on my giving him a letter, which I did, that being a second mortgage. There was a merger of interest. Certainly I felt there was no problem as to the First Colony having a good lien.

Q. Now, if I may—if Mr. Tydings will permit me to ask a leading question—wasn't the problem that the associations had advertised they only loaned money on first mortgages? A. Only on first mortgages.

Q. And here they had a first mortgage, and now they going to loan $20,000 in addition on the same property? A. That is correct.

Q. Secured by the same property? A. That is correct.

Q. And what opinion did you express to Mr. Robinson as to that? A. Well, they had another advertising policy, Mr. Robinson told me, that even on first mortgages they would only go to a certain percentage of its appraised value.

So we had both problems to contend with, the problem of first mortgages and complying with the advertising policy of their percentage on appraisal of the property. So it was worked out that the five mortgages, which are very small

in amount, would merge with the original interest, giving First Colony, as I term, a first lien on that property, and would not be a second mortgage in the sense that it was referred.

Q. Are you in effect saying that when a lender holds both a first mortgage and a second mortgage on the same property in the aggregate it is just the same as a first mortgage? A. There is a merger if the parties are one and the same, and it is on the same property.

So following giving me the mortgages, I reviewed the mortgages, and at the time prepared a release which was sent down to Calvert County to Mr. Bowen to be executed so that the mechanic's lien could be lifted.

At the same time I had seen for the first occasion the form of the A. I. Cassell mortgage, and that disturbed me because the affidavit on their printed form was not pursuant to our requirements of the Maryland law.

Q. There was no affidavit of consideration at all, was there? A. It was lacking entirely the consideration in the affidavit by the mortgagor.

Q. As to the payment of the consideration? A. As to the payment.

Q. And what did you do after you noticed this defect in this mortgage? A. Well, Mr. Robinson said that the matter, I think, had been discussed, but nothing had been done about it. I asked him how many mortgages were in the portfolio of the A. I. Cassell Company. He told me that it was several hundred mortgages aggregating in excess of $900,000. I told him that I felt that certainly there should be immediate attention given to correction of those mortgages.

Q. Now, did you then call Mr. Adelberg in Baltimore? A. I first had Mr. Robinson to bring me one or two samples, additional samples, which disclosed that they, too, were defective as to our Maryland requirement.

I then contacted Mr. Adelberg and suggested to Mr. Adelberg that he go over the entire portfolio of the A. I. Cassell Development Company.

Q. All mortgages? A. All mortgages.

Q. In the Silver Spring office? A. That is true.

Q. Now, Mr. Adelberg testified that he did that, and he also testified that he brought those mortgages back to your office. Did you ever have occasion to examine them in his office? A. I did because Mr. Robinson had the idea that there could be a simple amendment to correct the defect. I certainly objected to such a correction by a simple amendment.

Mr. Adelberg and myself and Mr. Robinson had one or more meetings. At those meetings we thought first that it may have to have individual confirmatory mortgages. Mr. Robinson objected to that. He said that it would cost approximately $1,500 to $2,000 to prepare and to file new mortgages.

I discussed with Mr. Adelberg further as to how best to correct these mortgages, and we agreed that one confirmatory mortgage would suffice, and Mr. Adelberg prepared the confirmatory mortgage.

Q. Now, Mr. Johnson, I think you testified in connection with this advice you gave Mr. Robinson as to this $20,000 mortgage split into five separate mortgages would not violate the advertising policy of the company. Did you write him a letter as to that? A. I did. He insisted, but I have been unable to find a copy of my letter.

Q. Mr. Robinson asked you for a letter on that? A. He did.

Q. And do you recall writing him a letter? A. I do recall.

Q. And you have not been able to find it? A. I have not.

Q. Would you say you had few or many conversations with Mr. Robinson about the problems you have mentioned in connection with Cassell? A. Oh, I had several with Mr. Adelberg. I think most of our conferences were by telephone, with the exception of two or three in his office.

Q. And did you have telephone calls with Mr. Robinson also? A. Very few telephone calls. Mr. Robinson would see me at my office or at my hotel in the evenings.

Q. Now, I show you what purports to be an original letter from Mr. Robinson to you, dated March 31, 1961, and ask you if you received that letter? A. Yes, that is a letter addressed to Johnson and Johnson, Berlin, Maryland, attention: Thomas F. Johnson, dated March 31, from Mr. Robinson.

(Mr. Doub) I offer it in evidence, Your Honor. It has been seen by all counsel.

(The Clerk) Defendant Johnson's Exhibit No. 57 marked in evidence.

(Defendant's Exhibit No. 57 was received in evidence.)

(Mr. Doub) (reading)

"Dear Tom:

"I enclose herewith my check in the sum of $800.00 in payment for your services for March, and would appreciate your opinion at your earliest convenience on the following matter:

"In the new savings and loan law, Section (D)(1) of 161P provides:

"'(D) Compliance. Any exisiting association which qualified for the exception to Sub-section (A) provided in Sub-section (B) hereof and which desires and intends to continue in the building, savings and loan business shall on or before January 1, 1962: (1) Require the use, at all times in connection with such name, the phrase, in parentheses, 'Stock Corporation'.'

"The act in numerous other sections refers to guaranty stock and, of course, contains specific provisions requiring the capital stock to serve as guaranty stock and, of course, at least technically all savings and loan associations are stock corporations. The question I desire your opinion on is would we comply with the quoted provision if we were to put in parentheses the phrase 'a guaranty stock corporation' or would compliance with the statute be limited solely to the use of the words 'stock corporation'?

"My personal opinion is that the intent and purpose of the act is to distinguish between those corporations having guaranty stock and those corporations having only free shares, and if that is correct then there should be no objection to the use of the words 'a guaranty stock corporation'. Mr. Goldman, whom you have met, disagrees with me and he feels that the statute having specifically put in quotes the words 'stock corporation', that we are limited solely to the use of those two words. Actually, it seems to me that the sole phrase 'stock corporation' by itself would be somewhat misleading since, as I previously stated, all savings and loans are stock corporations and the distinction in fact, and by the statute itself, is between those stock corporations which have guaranty stock and those which do not.

"Printing of new envelopes, letterheads, and so forth is being delayed prior to a final decision in regard to the phrase to be placed in parentheses. Please give me your opinion at your earliest convenience.

"Thanking you again for your many favors and your past cooperation, I am,

"Very truly yours,

"W. L. Robinson."

By Mr. Doub:

Q. Now, Mr. Johnson, upon receipt of that letter, what did you do? A. I met with Mr. Robinson. I gave him first what I felt was a hurried opinion. I told him I thought the

Legislature was rather explicit in the statute and by designating the word stock corporation specifically there was no question, but he was wrong in his interpretation of the act.

He was not satisfied. He said he felt that I was wrong, to look at more law. Well, I frankly, couldn't find much law on this particular subject. That went on, I would say, possibly two or three weeks or maybe a month. Mr. Robinson stated that he had to have a decision; that it involved not only the stationery, but a very large sign that they were erecting, running into quite a large sum of money.

So it resolved itself that Mr. Robinson just wasn't satisfied with my opinion, and I told him that I felt it could be concurred in by the Attorney General, Mr. Finan.

I asked Mr. Hickman, who is in Berlin, I dictated a letter for Mr. Hickman to Mr. Finan.

Q. Asking for the Attorney General's opinion? A. Yes, because I felt it was a matter that would be coming up with other associations. It had statewide interest. Furthermore, I didn't think as a Congressman I should possibly ask for an opinion from the Attorney General.

Q. Now, do you have that letter from Mr. Hickman to the Attorney General, which you say you prepared? A. I do.

(Mr. Doub) I would like to offer in evidence, Your Honor, an office copy of the letter from Russell O. Hickman to the Honorable Thomas B. Finan, Attorney General, dated May 8, 1961, which the witness has stated he dictated to Mr. Hickman.

(The Clerk) Defendant Johnson's Exhibit No. 58, marked in evidence.

(Defendant Johnson's Exhibit No. 58 was received in evidence.)

(Mr. Doub) The letter reads:

"Dear Mr. Attorney General:

"In the so-called Case Bill, now enacted into law, Section (D)(1) of 161P provides:

"(D) Compliance. Any existing association which qualified for the exception to Sub-section (A) provided in Subsection (B) hereof and which desires and intends to continue in the building, savings and loan business shall on or before January 1, 1962: (1) Require the use, at all times in connection with such name, the phrase, in parentheses, 'Stock Corporation';

"The act in numerous other sections refers to guaranty stock and, of course, pertains to specific provisions requiring the capital stock to serve as guaranty stock. The question I desire your opinion on is whether there would be compliance with the quoted provisions if an association put in parentheses the phrase 'a guaranty stock corporation,' or would compliance with the statute be limited solely to the 'stock corporation.'

"Thanking you for an early reply, I am

"Sincerely yours,

"Russell O. Hickman."

By Mr. Doub:

Q. I am asking you whether the Attorney General replied to Mr. Hickman's letter confirming the opinion that you had already given Mr. Robinson repeatedly verbally? A. He did.

(Mr. Doub) Does Your Honor think the reply of the Attorney General is sufficiently pertinent to put it in?

(Mr. Tydings) Why don't you have it marked for identification?

(Mr. Doub) All right.

(Mr. Tydings) I think perhaps it ought to go in, Your Honor. If you don't put it in, we are going to offer it in.

(Mr. Doub) I offer the copy of the reply of the Attorney General, dated May 15, 1961, to Mr. Hickman's letter, of May 8th.

(The Clerk) Defendant Johnson's Exhibit 59 marked in evidence.

(Defendant Johnson's Exhibit 59 was received in evidence.)

(Mr. Doub) (Reading)

"Dear Mr. Hickman:

"We have your letter of May 8, in which you inquire whether or not Section 161P (D)(1) of the Case Bill would be complied with if an association should put in parentheses (after its name) the phrase 'a guaranty stock corporation' as set forth in the aforesaid section.

"Subsection (D) was enacted for the purpose of setting forth the requirements necessary in order to take advantage of the exception provided in subsection (B) of the same section. The General Assembly was quite explicit in setting forth those requirements and, in regard to the name of any association which desires to take advantage of that exception, designated the exact words which it required for identification of such association. It did this by placing the words 'stock corporation' in quotation marks within the other words, whether of similar import or not, and we can only conclude that by placing the words 'stock corporation' in quotation marks, the General Assembly meant that those words, and none other, should be used.

"Accordingly, it is our opinion that the use of the language 'a guaranty stock corporation' would not constitute compliance with the above mentioned section and subsection of the Case Bill.

"Sincerely,

"Thomas B. Finan

"Attorney General

"James P. Garland

"Assistant Attorney General."

By Mr. Doub:

Q. Now, I wish to direct your attention next to the Charles County 8,000 acre tract of land, Mr. Johnson. Do you recall about January 1961 any discussions with Mr. Frank Boykin about his problems with respect to the 8,000 acre tract of land in Charles County? A. I do.

Q. And when did these conversations occur? A. It is difficult to pinpoint exactly the time. I am inclined to think it was early January 1961. It could have been earlier, but it was during that period of time.

Q. Now, how well did you know Mr. Frank Boykin at that time? A. It had been my pleasure to have known him for only the term that I served in Congress. He was the Vice-Chairman of the Merchant Marine Committee. At the Committee meetings—

Q. You were on that committee? A. I was on the Committee. We had a very close relationship, and like all of his other friends, we all loved Congressman Boykin.

Q. And you were a good friend of his? A. A very good friend.

Q. Now, what did Mr. Boykin tell you about this property at Waldorf? A. Congressman Boykin told me that he had an interest in some 8,000 acres of land located in Southern Maryland at a town near Waldorf which is only a short distance—some 20 miles, from Washington—the great potentials that the property had. He told me that a firm by the name of D. G. & R.—which later became known as Desser & Garfield, were endeavoring to develop the tract of land. That they had been running into some difficulty of getting adequate financing.

Q. Did he tell you that they had bought it from Albert Ernest? A. Yes, he had gone into detail. He told me that D. G. & R. had bought I believe, from three sources. It was from Albert Ernest, the Washington Turpentine Company, I believe he stated, and a third was the Tensaw Land and

Timber Company. It comprises many, many tracts which had been placed into the one large tract of land.

Q. Did he mention that Ernest held a mortgage from Desser & Garfield of about $6 million? A. Yes, in the discussion I learned that Desser & Garfield, they were known later as Desser & Garfield, in January, 1958 had given a mortgage for some $6 million which later was reduced, I believe, by the April payment, to $5,900,000.

That the mortgage was on the property to Mr. Ernest, Albert Ernest.

If you could refer to my records because I want to get it correct. The purchase money mortgage was dated January 27, 1958, and the notes were dated April 1, 1958.

It ran for a period of ten years. In other words, a ten-year amortization at a rate of interest of one per cent per annum.

Q. Now, what did Mr. Boykin tell you as to what Desser & Garfield were interested in? A. He told me that Desser & Garfield had been very successful in a Florida operation. He thought Desser was an excellent man; he told me of the great potentials they had in the property.

Q. What experience did he say Desser & Garfield had had in land development? A. He referred, I think, to a 5,000 acre tract in Florida.

Q. Tract in Florida? A. Yes, that Mr. Arthur Desser—who is president of the company—had developed. Also a development, I believe, in California. And that in this particular tract that Desser and Garfield had made payment on the mortgage of some $105,000 and had gotten a release of 97 acres land which he referred to as "the window."

That Desser had spent considerable money in the development of this 97 acres, but desired to have more development capital to go on with the development.

Q. And what suggestion did you have to make to Mr. Boykin? A. I told him I had been doing some work for

lending institutions, that Mr. Kenneth Edlin had represented himself as underwriter. That it started first with the Assateague Bridge involving some $1,700,000. That there had been loans under discussion and loans that had been made involving several millions of dollars; that Mr. Edlin had represented himself as being financially responsible to make substantial loans. That if the Congressman desired, I would be happy to see whether or not Mr. Edlin would be interested in talking with him.

Q. And what happened after that—what did Mr. Boykin say? Was he interested in meeting Mr. Edlin? A. Mr. Boykin was very enthusiastic. He said that he had an interest in the mortgage. He did not tell me what interest but he was very desirous of going on with the development. He stated it was the largest tract remaining of its kind in any or near any metropolitan area, that he would like very much to arrange a meeting with Mr. Edlin.

Q. And did you arrange such a meeting? A. I did. On January 6, 1961, I arranged a luncheon at the Capitol in Washington at which time I introduced Congressman Boykin to Mr. Edlin.

Q. What happened at the luncheon? A. Well, at the luncheon Congressman Boykin went more in detail as to this great development. He stated that not only for residential but that Desser was interested in the commercial aspects, too, and there had been I think, one or two glass companies that were interested in going in. At that time we had some 6 million unemployed in America. The Congressman spoke about the need for employment: What it would mean to the area to have particular factors, that there was need for housing, that he felt that this development with its potentials, certainly should be attractive and Mr. Edlin replied that it was a type of a loan that he felt that his lending institutions would be interested in; that he stated that he was underwriting not only underwrited for the savings and loan but had certain banking interests or connections; that he would review the requests for a loan.

Q. Now, after that meeting did you talk with Mr. Boykin?

A. On January 7, 1961, I received a copy of a telegram sent by Congressman Boykin to Mr. Arthur Desser.

Q. Is this the copy of the telegram to which you refer? A. It is.

* * * * * *

[3293] Now, Mr. Genn, do you wish to make some statement?

(Mr. Genn) Yes, Your Honor.

(The Court) Page 3188 you said.

(Mr. Genn) I would simply like the record to show, Your Honor, that in reference to page 3188 particularly, I think the comments of Mr. Tydings and Mr. Marion in reference to letters that were being offered, do seem to me to tend to be comments upon the duty of the defendant to bring forward evidence in the case. And I think that this is improper. I would like the record to show that I do object to that form of comment, particularly, I think it is not may be intended at that time, but that was the result of Mr. Marion's comment. I do object to that and I want the record to show it.

[Tr. 3303-3304]

Q. Now, what happened next, Mr. Johnson, after Mr. Boykin sent that telegram to Mr. Desser? A. Some days later Mr. Desser came to Washington and there was a meeting at Mr. Lykes Boykin's law office in Washington.

Q. Who were present at that meeting? A. Mr. Desser, Mr. Lykes Boykin, Congressman Boykin, Mr. Edlin, Mr. Robinson and myself.

Q. Will you state whether or not there was made available at that meeting the plats and plans for the Boykin City Development? A. Whether on that meeting but certainly a meeting very close to the original meeting there was or were plats. Those plats were termed plats of Boykin City which projected the proposed development in Southern Maryland.

Q. Well, now, what was discussed at that meeting? A. The question of financing. That Mr. Desser had started this development in Southern Maryland. He had what was termed the "Window" comprising some 97 acres near Waldorf. Considerable work had been done by way of engineering, laying out of site planning. He was desirous of additional funds. In the discussion he mentioned that $600,000 or thereabouts would be the amount that he felt would be required to proceed with it.

Q. Did he submit to the meeting any memorandum that had a breakdown of the allocation of the $600,000? A. He did. Whether at that meeting or the following one, but I was given, and I presume the others present, what he considered were the items to be financed.

Q. Now, do you have the memorandum which he had submitted to the meeting? A. I have.

Q. And is this such a memorandum? A. That is.

(Mr. Doub) I offer it in evidence as Johnson exhibit 61.

(The Clerk) Johnson exhibit 61 marked in evidence.

(Defendant Johnson Exhibit 61 received in evidence.)

* * * * * *

[Tr. 3306-3310]

Q. Now, Mr. Johnson, did there ensue further meetings and discussions with respect to this proposed loan to Desser and Garfield? A. Yes.

Q. Calling your attention to the amount of the loan, what evolved from those discussions?

(Mr. Tydings) Was he present? What is he testifying from now?

(Mr. Doub) Were you present at these meetings?

(The Witness) I was present at the meetings in which it was discussed. The proposal as to the $60,000-some—there were subsequent meetings in which it was suggested that this would not be adequate. That with a development of the magnitude of 8,000 acres, ultimately there should be

provided funds for a shopping center. There should be a hunting club. There should be a country club and many other items. It resolved that it was estimated some $2 million would be required to proceed with a proper development.

By Mr. Doub:

Q. Now, Mr. Tydings inquired whether you were present at all such meetings at this early stage, were you present at all such meetings? A. I would say I was present at all of the meetings in the initial stage.

Q. Now, what did you receive from Mr. Robinson about this time? A. On February 6, 1961, I received a communication from Mr. Robinson with certain enclosures.

Q. Do you have that letter from him? A. I do.

(Mr. Doub) I offer Mr. Johnson's Exhibit 62, a letter from Mr. Robinson to Mr. Johnson dated February 6, 1961 with the enclosures.

(The Clerk) Defendant Johnson Exhibit 62 marked in evidence.

(Defendant Johnson Exhibit 62 marked in evidence.)

(Mr. Doub) This letter reads:

"Dear Congressman Johnson:

"I enclose herewith for you examination preliminary draft of loan agreement with Desser & Garfield-Maryland, Inc. This preliminary draft is in essence an outline, and a number of the provisions therein will, of course, be in more precise form when the agreement is reduced to its final terms.

"This present draft is essentially for the purposes of negotiation and discussion of the final terms of the agreement.

"I felt that very possibly you might have some suggestion or particular provisions which you might feel should be a part of the agreement when it is placed in final form, and would appreciate your comments at your earliest convenience.

"I also enclose for your examination my letter to Lykes M. Boykin, attorney for Desser and Garfield, (Md.) Inc.

"Thanking you for your cooperation, I am

Very truly yours."

The letter is dated February 6, 1961 and it contains a copy of a letter dated February 4, 1961, from Mr. Robinson to Mr. Lykes M. Boykin, addressed to Mexico City, Mexico. I will read just the first paragraph:

"Dear Lykes:

"I enclose herewith for your examination a very rough preliminary draft of the proposed loan agreement between Garfield and Desser, Inc., and First Continental Savings and Loan Association, Inc. The references to the lands to serve as security for the sums to be advanced are necessarily vague and certainly subject to adjustment. No attempt was made in this draft to prepare a breakdown as to the amount of monies to be secured against each of the different tracts and, of course, there are still decisions to be made as to what work will be done in each tract and the sums necessary for the improvements contemplated as to each tract serving as security."

By Mr. Doub:

Q. Now, Mr. Johnson, there is also attached to this letter to you a rough draft which Mr. Robinson referred to in his letter to you. Will you summarize that rough draft and also would you tell us whether those penciled notations on it are yours? A. This is the copy of the loan agreement which was enclosed to me with Mr. Robinson's letter. We worked on this original copy.

Q. Now, you had not prepared—strike that.

State whether or not you helped Mr. Robinson prepare that rough draft, initial draft which he enclosed with his letter? A. I did not assist in the original draft.

Q. I see. A. I received a copy of the draft and with

Mr. Robinson, we worked on the draft that he had proposed. There are so many corrections that soon thereafter we had a copy or redraft made of this original draft.

Q. Well, all right.

Now, do you have a redraft as it evolved after you and Mr. Robinson had worked his original draft over? A. I have, and I think we termed this the second redraft.

(Mr. Doub) I offer it in evidence, Your Honor, as Johnson Exhibit 63.

* * * * * *

[Tr. 3311-3356]

(The Witness) May I explain as to the draft, the original draft, there were so many notations that from that draft, there was a cleaner draft prepared. This is what we term the cleaner draft but this is still a rough draft.

(Mr. Doub) Now, is it the same as the original draft of Mr. Robinson's?

(The Witness) With some minor changes.

By Mr. Doub:

Q. And there are some minor changes in it? A. Yes, sir.

Q. What did you and Mr. Robinson do after you prepared this second draft? A. We further discussed the rough draft. We termed that a rough draft, too.

Q. Are these penciled notations in your handwriting? A. They are and some that have been made since to refresh my recollection.

Q. You made some of them? A. Yes.

Q. Later? A. Yes.

Q. Now, do you wish to summarize that for the jury or the major provisions of it? A. This is as we term it, the rough draft because, subsequently there was another draft which completely changed what I am now explaining.

This was prepared in February of 1961. It is a loan

agreement, proposed loan agreement. The parties of interest Desser & Garfield, Inc.

(The Court) When you say "this," now, you are talking about another paper or the one which has been offered?

(The Witness) The one which has been marked here. Leftcourt Realty Corporation appearing as the guarantor, and First Continental Savings and Loan Association as lending institutions. The property is not set forth on which the mortgage is to secure the loan. It merely says that that will be inserted.

The proposed loan is for $2,300,000. That is to be secured first on the 97 acres which was termed the "window" that Desser & Garfield owned in fee simple of this tract. It was also to be secured by approximately 1,000 acres which would be released from the Ernest $6 million mortgage.

It was further to be secured by an assignment of all the Desser & Garfield stock and lastly, it was to be secured by a guarantor, Leftcourt Realty Company, appearing as guarantor for the loan. And a very complicated way of guaranteeing. The were to issue debenture bonds to secure the loans.

The three tracts spoken of first the 97 acres on which there was to be erected some 295 homes, the money to be used for roadways, landscaping, water system for sanitation, sewer, outfall. In addition, there was to be a country club and around the country club a four-lot development. The remainder of the 1,000 acres was for general development.

The loan agreement also stated that there would be three apartment houses to be immediately erected, five residential homes. As to the work on the apartment houses and tial homes. As to the work on the apartment houses and homes, there was the usual percentage payoff as to the construction development. That is, as they progressed.

I may say that in the discussion with Mr. Robinson, himself, we had some disagreement from time to time. I

told him in the preamble that I thought there should be a provision made for two independent appraisers, some percentage to protect the amount to be loaned. Also, as to the payout, I suggested that whenever there was approval by a state or governmental agency, that should be considered in the payout and not paid out under those conditions.

That FHA approval should be set forth both on the general development as well as including the progressive inspection of the development.

There were additional securities—all of the mortgage notes that Desser and Garfield would secure would be assigned over as additional collateral.

The purpose of that was to reduce the amount of the loan that there could be financing on the mortgages which would be coming in from the development. There was provision made that First Continental or any lending institution had the right of nominating an officer of Garfield and Desser, that officer would join in on the signature of all checks to be issued in respect to development.

There was provision made as to approval by an architect which would be provided by Desser, subject to the approval of the lending institution and then Mr. Robinson had put in a provision that the lending institution could secure their own architect and that architect would act, which to me presented a problem because there could be a conflict.

We wanted to work out as to what would happen in the event that Continental would secure their own architect.

There were further provisions made that for insurance coverage, fire, storm and others, that that would be at the cost of Desser. I thought that was not broad enough. That there should be provision made for the Workmen's Compensation Act.

I also suggested that provision should be made that if the borrower fails to provide the insurance or fails to pay the premium, that the privilege should be to the lending

institution of paying the same and adding it to the loan. There was provision for taxes. I recall making the same suggestion, the right of the borrower in the event the borrower failed, that the lending institution could pay.

By Mr. Doub:

Q. You mean failed to pay the taxes? A. To pay the taxes that should be accumulated or that should be paid by the lending institution and charged against the loan.

Then there was other provisions as to the release clause which is a very complicated release clause in the repayment program. And that was stated to be equal to the pro rata share of such lot as to the entire mortgage plus 20 per cent of such pro rata share, for a total price which shall be equal to the pro rata share of each lot plus 20 per cent of such pro rata share. Meaning that in the release clause that the borrower would pay a 20 per cent premium and then it went on that if there was any profit over and above the release clause, 70 per cent of that profit the borrower would have to put in a special escrow account for further improvements on the property, where, he would not have to use as much of the loan as was originally planned for.

There was a provision that all fees, charges and such collected from the country club would be paid and applied on the mortgage.

I advised Mr. Robinson that certainly that would not be a provision to be included because it may intimate that the lending institution was operating a country club, that you should work out a lease arrangement or some other provision in respect to the receipts from such an operation.

There were two or three escrow accounts provided for. I suggested that there should be only one escrow account and one escrow party.

Provision was made for the outfall system, the lagoon system.

I suggested that we should have further conferences with the Town of Waldorf who had extended part of their line

into the area to ascertain whether or not something could not be worked out with the town which, to me would be more feasible than operating a private and distinct system. It also provided that this loan agreement, that they would get the consent of the Sanitation Commission as to the lagoon system. I suggested that that consent should be gotten in advance so there would be no difficulty with respect to the Sanitation Commission.

The loan agreement as proposed embodied some 35 pages.

(Mr. Marion) Mr. Doub, could I interrupt just a minute?

Was that 62 or 63 that the witness was referring to?

(The Witness) No. 63.

By Mr. Doub:

Q. That is Defendant Johnson Exhibit 63? A. Yes.

(Mr. Tydings) That was the one you were using during this long protracted testimony, 63?

(Mr. Marion) That was the second draft, I think you said, was it not?

(The Witness) It was sort of a rewrite of the original.

(Mr. Marion) The second rough draft, in other words?

(The Witness) Very rough.

By Mr. Doub:

Q. Now, as a result of these meetings which you testified you had with Mr. Robinson about these drafts, did a further draft evolve? A. Well, before that, Mr. Robinson and myself, working together thought it advisable to have certain memorandum to Mr. Lykes Boykin. Mr. Lykes Boykin was representing Desser and Garfield.

Q. Do you have copy of such a memorandum? A. I do.

Q. And who prepared that? A. Mr. Robinson as far as I can recall, prepared this and I notice that there were cer-

tain incorporations of the suggestions I made. Others made by Mr. Robinson and also made by either Mr. Desser or Mr. Lykes Boykin.

Q. And this memorandum is dated February 21, 1961, addressed to Mr. Lykes Boykin.

(Mr. Doub) I offer this as Johnson Exhibit 64.

(The Clerk) Defendant Johnson Exhibit 64 marked in evidence.

(Defendant Johnson Exhibit 64 marked in evidence.)

By Mr. Doub:

Q. Would you summarize that? A. Yes.

This is a memorandum to Mr. Boykin, Lykes Boykin.

(Mr. Marion) One moment. I am not sure that summarization of these documents is relevant here. The witness can tell, I assume, what, if anything, he did, but to summarize a document which otherwise speaks for itself—we will be here forever.

(Mr. Doub) We are trying to save time by not reading it, Your Honor, to the jury. I thought it would be much quicker and all I am really interested in, Mr. Johnson—

(The Court) I think he can make a somewhat shorter summary than the last time.

(The Witness) This is a memorandum to Mr. Lykes Boykin. Paragraph 1, that under the proposed agreement there would be no funds to be used for promotional activities such as advertising, public relations and so forth. That was a suggestion that I had made.

No. 2, was Mr. Desser felt that there should be some credit on the loan for the engineering costs that had been expended on the property and credit given against the loan.

By Mr. Doub:

Q. You mean those were engineering expenditures that had already been made by Desser & Garfield? A. Yes, and under paragraph 2 that there would be an allowance made for the engineering costs made by Desser & Garfield.

No. 3, provides for the two independent appraisers which, before the loan would be made, that appraisers would have to appraise the property at a value not to exceed 75 per cent of the appraisal as to prime security.

The fourth provision is one that I had insisted that no money be disbursed where the work is subject to approval by some state or federal government agency.

The fifth—I do not know who suggested it, but the subdivision plan must require approval of FHA.

Then attached thereto Mr. Desser had agreed that certain work had been completed so we could evaluate what would be the proper amount to be credited to loan for his engineering, and that goes into several pages as to what he had done.

Q. Just skip that.

All right, now you testified that you participated in meetings with Mr. Robinson in the preparation of these drafts of this proposed loan agreement. Did you participate in any meetings with respect to the terms of the proposed loan with Mr. Desser and Mr. Lykes Boykin? A. I did.

Q. And where were those meetings? A. Those meetings were in Mr. Lykes Boykin's office, some on the Hill.

Q. And what were the principal subjects discussed at those meetings? A. May I say, before getting to those discussions, the mortgage, the $6 million mortgage, was to mature on March 1, 1960, and it was necessary to prepare a modification agreement to extend the mortgage.

Q. And who prepared that? A. Mr. Robinson prepared

a modification agreement which I approved where we extended, had an extension of the mortgage to April 10, 1961.

Q. And did you not contribute anything to the drafting of that? A. I did not.

(Mr. Doub) I offer it in evidence, Your Honor, to keep the sequence.

(The Clerk) Defendant Johnson Exhibit 65 marked in evidence.

(Defendant Johnson Exhibit 65 marked in evidence.)

By Mr. Doub:

Q. This agreement extended the payments under the mortgage until what date? A. April 30, 1961.

Q. Now, do you recall anyone preparing an agenda with respect to what should be done and checked with reference to this proposed loan? A. I do, following the rough drafts of the other proposed loan, there was another meeting in Mr. Lykes Boykin's office. I was not present at the time the agenda was prepared but I was sent a copy of the agenda for the revised loan.

Q. Do you have it there? A. I do.

Q. And did you not participate, you say, in the preparation of this agenda? A. I do not recall doing it. I may have. I do not recall.

Q. Do you recall whether this came from Mr. Robinson or Mr. Lykes Boykin? A. I do not recall. It was in my file.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson Exhibit 66 marked in evidence.

(Defendant Johnson Exhibit 66 marked in evidence.)

By Mr. Doub:

Q. This bears a number of penciled notations on top of the various items and there are 21 items. Are they in your

handwriting or did you make them at the time? A. They are, and I do not know when they were made but they are in my handwriting.

Q. Now, Mr. Johnson, what difficulties arose with respect to this proposed loan? A. Well, immediately following the agenda there was no immediate difficulty because we proceeded then with another loan agreement, preparation of another loan agreement.

Q. You mean a draft? A. A draft.

Q. And that was prepared by whom? A. I would say that it was a combination of Mr. Lykes Boykin, Robinson and myself, with Mr. Robinson doing the major portion of the draft.

Q. Was that the result of a few meetings which you had or many meetings? A. Well, it was many meetings with Mr. Robinson, more between Mr. Robinson and myself, in the preparation or the re-work of this agreement, of this proposed agreement.

Q. And is this the redraft to which you have just referred? A. Yes.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson Exhibit 67 marked in evidence.

(Defendant Johnson Exhibit 67 marked in evidence.)

By Mr. Doub:

Q. Are there any provisions in here that you wish to call attention to, Mr. Johnson? A. Well, this proposed loan agreement is quite different from the previous proposal. The parties are the same.

Q. You mean the prior draft? A. Yes. The parties are the same constituting Desser & Garfield, Leftcourt Realty, First Continental Savings and Loan as the lending institution. It gives as security the 97 acres which Desser &

Garfield owned in fee. Also the 1,000 acres which was to be released from the $6 million mortgage.

Q. I would like you just to refer to the differences, Mr. Johnson, from the prior? A. Well, in this agreement, proposed agreement, we set out three distinct tracts. Tract A was to be 97 acres; then tract B was to be what we termed the Country Club Area of 150 acres with four lots deep surrounding the golf course, and tract C was the remainder of the 1,000 acres.

Then we set forth a suggested sum that would be required for development, storm drains, siding, roads, lagoon system and it was suggested that $900,000 be for development of Tract A; $480,000 for Tract B, $520,000 for tract C.

Also we put a ceiling on what could be expended from the loan, not more than $20,000 could be used for promotional activities such as advertising and public relations, and for legal fees not to exceed $50,000 a year; for Engineering, not more than $75,000 a year. That no part of the loan could be used for paying salaries for employees of Desser & Garfield. And that no part of the loan could be used for payment or compensation to salesmen engaging in selling the homes.

It goes quite into detail as to each tract, what is required before work can be started by way of plans and specifications. Then it sets up by provision before loans can be disbursed, that it must be approved by the architect or engineer, agreed upon by the parties. The same provision as to nominating of an officer by the lending institution. Those are the basic provisions.

Q. All right. Now, did you receive a letter from Lykes Boykin of about March 10? A. I did and as I spoke there we were dealing with tracts A, B and C and we were anxious to get cost figures and some plats of those three tracts which were provided for it in the loan agreement—proposed loan agreement.

Q. I now show you a letter from Mr. Lykes Boykin to you and ask if you received that letter? A. I did receive it.

(Mr. Doub) I offer it, Your Honor. The letter dated March 10, 1961.

(The Clerk) Defendant Johnson exhibit 68 marked in evidence.

(Defendant Johnson exhibit 68 marked in evidence.)

(Mr. Doub) On the letterhead of Boykin & De Francis, Grimes & Smith, addressed to the Honorable Thomas Johnson.

"Dear Tom:

"I am enclosing these cost figures and sketches of tracts A, B and C at the request of Bill Robinson.

"I will look forward to seeing you next week.

"Kindest personel regards,

/s/ "Lykes M. Boykin."

By Mr. Doub:

Q. Now, do you have a copy of these cost figures and sketches of these tracts which he states he was enclosing to you? A. I do not have them in my file, no, sir. I think they were presumably turned over to someone else.

Q. In the course of these discussions did Mr. Edlin indicate to you that this loan would be made entirely by First Continental Savings and Loan? A. No, it was stated then in the discussion that the amount proposed was more than what the institution would extend by way of a loan. That it would be a participation. That participation would be with First Colony and possibly other institutions.

Q. Now, I show you a letter dated March 1, 1961, from Mr. Robinson and ask you whether you received that letter? A. I did.

(Mr. Doub) I would like to offer it, Your Honor.

(The Clerk) Defendant Johnson's exhibit 69 marked in evidence.

(Defendant Johnson exhibit 69 marked in evidence.)

(Mr. Doub) Letter of March 1, 1961 from Mr. Robinson, Miami, Florida, to Congressman Johnson.

"Dear Tom:

"I will be in Miami for several days to take care of various matters during which time I would very much like the opportunity to discuss with you several of the loans that we are now considering and in particular the proposed Maryland development housing and apartment house loan and would appreciate it very much if you could meet me in Miami so that we might discuss these matters at length.

"Thanking you for your cooperation, I am

"Very truly yours."

By Mr. Doub:

Q. Now, Mr. Johnson, had you contemplated a vacation trip to Miami about the time you received that letter or not? A. I had and I told Mr. Robinson that I would be in Miami or near Miami possibly the early part of March, 1961.

Q. Had you told him before or after you received that note from him? A. I had told him before.

Q. You had told him before? A. In fact, I suggested he make reservations for me.

Q. When were you in Miami and where did you stay? A. I stayed at the Eden Roc Hotel, Miami Beach, arriving, I believe, on March 3, 1961.

Q. And you took Mrs. Johnson and two children? A. That is correct.

Q. Did you pay for your airline travel tickets for yourself and your family? A. I did.

Q. What is this check dated March 3, 1961? A. That is a check on my personal account at the Sergeant-at-Arms, House of Representatives, payable to National Airlines, in the amount of $306.04 dated March 3, 1961. It was in payment of airline tickets.

Q. Did that cover the airline tickets, the plane fares down from Washington to Miami? A. That was a one-way.

Q. One way.

Now, I show you a check dated March 6, 1961 to the National Airlines and ask you what this is? A. That is a check, as you have said, dated March 6, 1961, on the account, my account at the Sergeant-At-Arms, payable to the National Airlines in the amount of $223.32, and that was covering the return flight on March 6, from Miami to Washington.

Q. Now, I show you your check of March 6, 1961 payable to the Eden Roc Hotel and ask you what that is for? A. This check, as you stated, dated March 6, 1961, is on my account at the Sergeant-at-Arms in Washington, payable to the Eden Roc Hotel in the amount of $485.11 which paid in full my hotel bill during the three days or two days that I was in the hotel.

(Mr. Doub) I offer these, Your Honor. I suggested they be marked collectively as one exhibit.

(The Clerk) Check dated March 3 will be marked as Johnson exhibit 70-A; check dated March 6 in the amount of $223.32—National Air Lines, will be marked as Johnson exhibit 70-B, and check dated March 6, 1961 in the amount of $485.00 will be marked as Johnson exhibit 70-C.

(Defendant Johnson exhibits 70-A, 70-B and 70-C marked for identification.)

By Mr. Doub:

Q. Mr. Johnson, did anyone reimburse you for the ex-

penditures represented by the three checks which you have just identified? A. They did not.

Q. Now, did you have any business meetings while you were in Miami? A. I did.

Q. With whom? A. The first I recall now, and I had to refresh my recollection because it has been some time ago—the first was with a Mr. Makel Guerrieri, of the Shell Poultry Company in respect to his brother's estate. I had been assisting Mr. Guerrieri with respect to the settlement of his interest in that estate.

Q. Did you have any meetings with anyone else? A. I did. I do not know whether on one or two meetings with Mr. Robinson. They sent a car over and I went over to Mr. Robinson's Office. I do not remember whether I was there over one visit or two during the short time I was there.

Q. Now, what were the subjects of discussion? A. It dealth with a man named Bridges who had been an associate of Mr. Edlin, or had some connection with First Continental Mortgage Company. Mr. Bridges had made claim of a share of stock or a percentage of the stock in First Continental Mortgage.

He had made demand, I think, for $10,000 and certain threats or accusations in an effort to collect that amount of money. I know that was discussed. That was refreshed in my mind by Mr. Robinson. I had forgotten a great deal about it, but that was refreshed by letter that I received.

Q. Do you recall whether—

(Mr. Tydings) Refreshed by letter which you received?

(The Witness) Yes, sir.

(Mr. Tydings) Do you have that letter?

(The Witness) Yes, I have the letter.

(Mr. Tydings) Is it going to be in evidence?

(The Witness) It will be in evidence. Letter of March 8.

By Mr. Doub:

Q. Did Mr. Robinson submit to you a memorandum about that Bridges matter which you went over with him? A. He did. I refreshed it again by the letter that I received on the 8th and also I had asked Mr. Robinson to see a copy of the indictment against First Colony.

Q. And Mr. Edlin? A. And Mr. Edlin and other parties, and I asked him if I could have that to read the indictment. He gave me a copy of that.

Q. You brought it back to Washington? A. I did. There were other matters discussed as to loans. I do not recall which ones for the moment.

Q. Did you have any discussion in Miami with Mr. Robinson as to the possibility that you might make any visits to the Department of Justice? A. None whatsoever at that time.

Q. Now, you have referred to a letter of March 8, 1961, from Mr. Robinson to you. I show you Government Exhibit No. 92 and ask you if that is the letter to which you have referred? A. That is a copy of the letter that I received.

(Mr. Doub) I will read the first sentence.

"I enclose herewith for your inspection three letters of James W. Bridges, one being dated September 25, 1958, which enclosed his resignations and requested the sum of $10,000 for his alleged stock interest,"

(Mr. Tydings) Read the rest of the letter just to get the complete context in since it has been referred to here, Mr. Doub, please,

(Mr. Doub) (reading)

". . . closing, as you will note, with the expression that pending acceptance he would withold further action. As you of course know, this was followed up by conversa-

tions with Rinehart, a conversation with Kenneth in which verbal threats were made in an attempt to collect the $10,000."

By Mr. Doub:

Q. Was that the $10,000 that you referred to as the claim he was asserting to be paid for the stock interest? A. He was making demand for a $10,000 settlement as reported to me.

Q. "Also enclosed is letter of November 20, 1958, to Slipher of the Savings and Loan League, which letter I believe is self-explanatory, and another letter which was written to Seymour Guthman, an attorney in Washington, in which he threatened to go to various authorities.

"I understand that similar letters were written to other members of the Board of First Colony and officers and resulted in several of them resigning through fear of adverse publicity. If Bridges were to carry out his threats as contained in his letter to Gutman of November 28, 1958, I do not believe that this correspondence can leave much question as to the vindictiveness and viciousness of Bridges and I trust they will be of some assistance to you in your redrafting of the memorandum given to you during our conference in Miami.

"Thanking you for your many favors and your cooperation, I am

"Very truly yours,

"W. L. Robinson."

Now, he says "I trust that this will be of some assistance to you in your redrafting of the memorandum given to you during our conference in Miami." What memorandum was he referring to? A. I presume in reference to Bridges. To be very honest with you, I have forgotten most of it by this time.

(The Court) What number is that?

(The Clerk) No. 92.

Government exhibit 92.

(Mr. Tydings) Are you going to follow up with this memorandum on Bridges, Mr. Doub? He refers to a memorandum on Bridges and other enclosures. Since you have put this in, we would like to see them.

By Mr. Doub:

Q. Do you have the other enclosures referred to in that letter from Mr. Robinson to you? A. I don't have it.

Q. Now, Mr. Johnson, will you tell the jury why this proposed loan agreement which you have testified you worked on with Mr. Robinson was not consummated? I am talking now about the proposed loan to Desser & Garfield? A. Yes, during March the negotiations that we had bogged down. The reason being, one that Mr. Desser through Mr. Lykes Boykin thought there were too severe restrictions by the lending institution on the money to be used in the development; further, that the security, the request for the amount of security was greater than should be required. Furthermore, that Desser & Garfield, which was a subsidiary of Leftcourt, the stock, as we understood it, was pledged by Leftcourt with a Philadelphia Bank and it was difficult to get the release of the stock which had been a part of the proposed agreement. That is, the assignment of that stock over to the lending institutions.

Q. As further collateral? A. As further collateral. Also at that junction, further compilations arose that Mr. Edlin was connected with the savings and loan association, that is, First Colony, First Continental. And the fear that FHA would not approve the lending institutions that were to participate in the loan.

Q. Now, in March of 1961, and after you say the negotiations for this loan to Desser & Garfield had bogged down, do you recall any legal work you did with respect to an alternative proposal? A. Yes, there was a meeting and I am rather confident that Mr. Desser was present although I am not able to say positively. It was thought

that the approach would be to divorce Mr. Edlin from the the savings and loan, or any suspicion or any idea that he was connected with the savings and loan and also to change ownership of First Colony and First Continental so there was a discussion whereby Leftcourt—which was a corporation listed on the Exchange—

Q. What exchange? A. I think the American, I am not positive. I think it is the American. —that there would be an agreement worked out for exchange of stock that Leftcourt would exchange 500 shares of its stock for all the Class B stock owned by First Continental Mortgage Company of First Colony, and First Continental and, purusant to those negotiations. Mr. Robinson and myself prepared a rough draft of an agreement for that exchange.

Q. Do you have such a draft with you? A. I do.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson exhibit 71 marked in evidence.

(Defendant Johnson Exhibit 71 marked in evidence).

(Mr. Tydings) Mr. Doub, was Mr. Desser represented by counsel in these meetings in connection with this draft?

(Mr. Doub) I will ask you this, can you answer Mr. Tydings' question?

(The Witness) Mr. Lykes Boykin was the counsel for Desser & Garfield and throughout all of the transactions up to a point later in the dealings.

By Mr. Doub:

Q. Do you remember whether Mr. Lykes Boykin participated in any meetings with respect to this idea of an exchange of stock of Leftcourt? A. I do not. I presume that he did but I cannot say what his participation was. I do know that he was mentioned as one of the parties in the agreement. I am confident he was consulted.

Q. Now, did anything come of that proposed exchange of stock? You have testified that you worked on this initial draft of an agreement? A. No, it ran into so many complications that that finally was abolished.

Q. Do you recall working on any other alternative proposal? A. I do.

Q. And this would be in what month? A. In April, 1961.

Q. What did those negotiations relate to? A. They related that First Continental Mortgage Company would buy all of the stock of Desser & Garfield and would also make a payment on the Ernest mortgage, the $6 million mortgage in order to secure modification provisions of that mortgage.

Q. Now, did you receive from Mr. Robinson a copy of a letter from Mr. Robinson to Lykes Boykin dated April 10, 1961? A. I did.

Q. Do you have it there? A. I have it.

(Mr. Doub) I offer this in evidence.

(Mr. Tydings) Is that the copy which Mr. Johnson received? Is what you are offering now a copy which Mr. Johnson received?

(The Witness) I received a copy but that looks like a photostat. I do not know where my copy is, Whether the Government has it or Mr. Doub has it.

(Mr. Tydings) Do you know where that came from?

(The Witness) I received that from Mr. Robinson.

(The Clerk) Defendant Johnson exhibit 72 marked in evidence.

(Defendant Johnson Exhibit 72 marked in evidence.)

(Mr. Doub) And I will identify it further.
Johnson Exhibit 72 is a letter on the letterhead of Mr.

Robinson. I should say it is a photostatic copy of a letter, on the letterhead of W. L. Robinson dated April 10, 1961, addressed to Boykin, DeFrancis, Grimes and Smith, Solar Building, Washington.

"Gentlement:

"I enclose herewith to be held by your firm as escrow agents, two cashier's checks, one in the amount of $100,000 and one in the amount of $30,000 payable to Albert Ernest, together with a certain modification agreement of existing mortgages encumbering that property in Charles County, Maryland, now known as Linda City. Said cashier's checks for $130,000 to be delivered to Mr. Ernest upon the happening of all the following events:

"1. The execution by Albert Ernest of the modification agreement enclosed herewith.

"2. The delivery to you as escrow agent of all capital stock of Desser & Garfield—Maryland, Inc., and that certain notes for approximately $30,000 representing an indebtedness to Leftcourt Realty, Inc., from the owner of the Charles County Newspaper;

"3. The delivery of a letter by Lykes Boykin to First Continental Savings and Loan Association, Inc., stating that he has conferred with the necessary state officials and confirming the acceptability of a lagoon sanitation system for 1500 users upon the premises known as 'Linda City.'

"4. Receipt of a letter from Thomas P. Johnson, Attorney of Snow Hill, Maryland, to the effect that he has conferred with the necessary agencies and that there are no existing road projects which would interfere with the development of Linda City and that there are no zoning restrictions which would prohibit or interfere with the construction upon the premises of a county club and golf course, hunt club, cabana club and youth center together with trials and bridle paths necessary and proper for such facilities and further confirmation that the plats heretofore prepared for approximately 259 lots but in no event

less than 250 lots, the first section of Linda City can be recorded with the approval of the Charles County Planning Commission.

The matters set forth in paragraphs numbered 1, 3 and 4 of these escrow instructions shall be performed on or before Friday, April 14, 1961. And the matters set forth in paragraph No. 2 hereof shall be performed on or before three days after completion of items 1, 3 and 4 are not completed within the time hereinabove set forth, then in such event you, as escrow agent, are authorized and instructed to return the checks for $100,000 and $10,000 to First Continental Savings and Loan Association, Inc., and to return to Albert Ernest any and all papers executed by him. In the event that each of the matters described in paragraphs 1, 2, 3 and 4 are completed within the time hereinabove specified, you are authorized and instructed to deliver the said checks for $100,000 and $30,000 to Albert Ernest and to simultaneously deliver to First Contimental Mortgage Corporation, a Florida corporation, or its nominee, the capital stock and note described in paragraph numbered 2 of these instructions and upon such delivery you as escrow agent, shall be discharged of all obligations.

"Thanking you for your cooperation in this matter, I am

"Sincerely yours,

/s/ "W. L. Robinson."

It contains this endorsement:

"We hereby accept the conditions imposed upon us as escrow agents in connection with this offer and agree to abide by the terms thereof and acknowledge the receipt of cashier's checks payable to Albert Ernest totalling $130,000.

"Boykin, De Francis, Grimes & Smith,

"By Lykes M. Boykin, Partner."

Now, did you assist in the prepartion of that offer?

(The Witness) Not as to the letter, no.

Q. You did not assist in the preparation of that offer from Mr. Robinson? A. No.

Q. Now, did Mr. Robinson at about this same time make an offer to Desser & Garfield? A. Yes, sir, but with the letter there were enclosures, 1, a purchase money promissory note, and also agreement modifying the purchase money mortgage which later we rewrote into a second proposal for a modification of the mortgage.

Q. Now, were those enclosures attached to this letter of Mr. Robinson? A. They are attached and the note shows that on April 21 the $130,000 to be paid as a principal on the $6 million mortgage.

Q. Now, do you have the papers to which you have just referred? A. I have.

Q. And you are handing me a purchase money promissory note dated April 21, 1961 in the amount of $6 million? A. That is a copy, yes, sir.

Q. Who prepared this? A. Presumably, Mr. Robinson.

Q. You do not claim to have prepared it? A. I did not prepare the note.

(Mr. Doub) Just to complete the record, Your Honor, I will offer it.

(The Court) Was it ever used? What is the use in encumbering the record with papers he did not prepare and which were never put into effect?

(Mr. Doub) Your Honor's logic is irresistible.

By Mr. Doub:

Q. All right, what is the other paper to which you refer? A. That was enclosed as to a modification of the $6 million mortgage.

Q. And you have handed me such a paper entitled "Agreement modifying purchase money mortgage." Did you

participate in the preparation of this draft? A. I did not but I did participate in a redraft of that agreement.

Q. Well, I would like to offer this, Your Honor, although I am not going to read it.

(The Court) Certainly, the papers that he prepared he can tell what he did but what is the use in putting in the preliminary papers that someone else prepared?

(Mr. Doub) I think the Government might like to see the comparison.

(The Clerk) Defendant Johnson exhibit 73 marked in evidence.

(Defendant Johnson exhibit 73 marked in evidence.)

(Mr. Tydings) Just a couple of clarifying questions. That is the draft which was not prepared by Mr. Johnson, is that right, Mr. Doub, what you are introducing?

(Mr. Doub) That is what I understood.

(The Witness) That is correct.

(Mr. Tydings) Does he know who prepared it?

(Mr. Doub) Now, do you know who prepared it?

(The Witness) I do not. I presume Mr. Robinson did.

(Mr. Marion) How many pages are there in that, Mr. Doub?

(Mr. Doub) Six pages.

By Mr. Doub:

Q. Now, what happened next, Mr. Johnson? A. I was asked to review the proposed modification and, as a result of conferences, there was a new draft prepared incorporating some changes.

Q. And did you participate in the preparation of that redraft? A. To the extent of making suggestions in the redraft.

Q. Do you have that redraft before you? A. I have.

Q. Whom did you work with in connection with it? A. Mr. Robinson.

Q. This contains various pencil notations. Is that in your handwriting? A. That is mine. I do not think they are legible now.

(Mr. Doub) I offer it, Your Honor.

(Mr. Tydings) Just a couple of clarifying questions. Does he know approximately when the conferences were held, Mr. Doub, and whether anyone else was present other that Mr. Johnson and Mr. Robinson?

(Mr. Doub) Would you like to answer that, Mr. Johnson?

(The Witness) Which question, first?

(Mr. Doub) Mr. Tydings would like me to ask you about when the conferences were held relating to the redrafting of the proposed agreement modifying the terms of this $6 million mortgage.

(The Witness) The letter was dated April 10, 1961 so I presumed it was a redraft which was following that by some days.

(The Clerk) The last exhibit is Defendant Johnson exhibit 74 in evidence.

(Defendant Johnson exhibit 74 marked in evidence.)

(Mr. Tydings) Did anyone else participate in the conference other than you and Mr. Robinson?

(The Witness) I do not recall whether Mr. Lykes Boykin did or did not.

By Mr. Doub:

Q. Now, what other offer was made by Mr. Robinson in writing about this time? A. April 13, 1961, there was an offer made on behalf of First Continental Mortgage Company which is really a tie-in with the offer made on April 10, 1961.

Q. You mean this second written offer was tied in with the first offer—that one was conditional upon the other one or one could not be consummated without the other, is that what you mean? A. Yes, sir, they were connected.

Q. All right. Now, did you receive a copy of this proposal? A. I did and Mr. Robinson had discussed that with me prior to writing the letter.

(Mr. Doub) I offer it.

(The Clerk) Defendant Johnson exhibit 75 marked in evidence.

(Defendant Johnson Exhibit 75 was marked in evidence.)

(Mr. Williams) What is the date?

(The Clerk) April 12, 1961.

(Mr. Marion) May I interrupt you a moment? The one that went in a moment ago, I notice the photostat you supplied us over the weekend had some writing on it. You have asked the witness whose handwriting was on some of them. I do not think this is his. Rather than confuse the jury, perhaps you can clarify it. They have that No. 73, page four of No. 73.

(Mr. Tydings) Page four on the right hand column.

By Mr. Doub:

Q. I show you Johnson exhibit 73, being a draft of an agreement modifying the term of the $6 million mortgage. Turn to page four which bears some penciled notations. I ask you whether that is in your handwriting? A. No, that is not in my handwriting.

Q. Do you know whose it is? A. I think that is Mr. Robinson's or his secretary. I do not know which.

Q. Johnson exhibits 75 is a copy of a letter dated April 12, 1961, addressed to Boykin, De Francis, Grimes and Smith.

"Gentlemen:

"I am authorized on behalf of my client, First Continental Mortgage Corporation, to make an offer to you as attorneys for Lefcourt Realty Corporation, to purchase all of the outstanding capital stock of Desser & Garfield (Md.), Inc., together with that certain note of approximately $30,000 representing an indebtedness to Lefcourt from the owner of the Charles County Leaf for $150,000. In that connection, I am enclosing herewith a cashier's check in the amount of $150,000 for this purchase. This check is to be held in escrow by you for delivery to Lefcourt, subject to the delivery to you of the documentation set forth in the attachment hereto.

"If your client, Lefcourt Realty Corporation, desires to accept this offer, it may do so at any time between the date of this letter and five o'clock p.m. April 21, 1961. If the offer is not accepted prior to that time, it is automatically withdrawn. Upon the delivery to you of the aforesaid documentation, you are authorized to deliver the enclosed check to Lefcourt Realty Corporation; otherwise, this check is to be returned to me.

"If your firm is willing to accept the escrow obligations indicated herein, it would be appreciated if you would execute this letter in the space provided for below.

"Very truly yours,

"W. L. Robinson."

And it bears this endorsement:

"We hereby accept the conditions imposed upon us as escrow agents in connection with this offer, and agree to abide by the terms thereof.

"Boykin, De Francis, Grimes & Smith

"By Lykes M. Boykin, Partner."

Do you know whether Mr. Lykes Boykin accepted the

escrow agency? A. He did. He also initialed or signed the conditions as having received the conditions attached to the letter.

Q. And the conditions are in a separate memorandum attached to the letter, are they not? A. That is correct.

Q. And when you refer to Lykes Boykin's signature, that is on your copy, too? A. That is Mr. Boykin's signature.

Q. Now, would you explain the attached memorandum which is referred to in a letter as documentation in connection with the purchase of the stock by First Continental—I suppose it had better be read, Your Honor.

(The Court) Then did this transaction go through or was it superseded by something else?

(Mr. Tydings) None of them went through.

(The Court) What is the significance of a transaction that did not go through?

(Mr. Doub) From the point of view of Mr. Johnson's legal services that is what is significant about it.

(The Witness) May I answer the Court about that? It was all superseded because ultimately as an outgrowth there was a transaction involving the sale of stock and the mortgage. This is all prelimination negotiation.

(The Court) Why not read the final one?

(Mr. Doub) Your Honor, we are not interested—

(The Court) He did not prepare this, did he? I did not understand.

(Mr. Doub) He worked on it.

(The Court) I did not understand that he ever said yet that he either worked on it or prepared it. This letter.

By Mr. Doub:

Q. I will ask him. Did you have anything to do with the memorandum attached to the offer of Mr. Robinson? A. I

did. Mr. Robinson consulted with me as to the conditions. I had more conditions which I wanted to incorporate but he did incorporate those which were part of mine.

Q. Some of these conditions were yours. A. Yes.

(Mr. Doub) I would like to read it, Your Honor.

"Documentation Required by Desser and Garfield (Md.), Inc., In Conjunction with the Purchase of its Stock by First Continental Mortgage Corporation.

"1. Delivery by Lefcourt Realty Corporation of all of the capital stock of Desser and Garfield (Md.), Inc., endorsed in blank, together with the original of the note of approximately $30,000 representing an indebtedness to Lefcourt from the owner of the Charles County Leaf, with an assignment of that note executed in blank.

"2. Written resignation of all officers and directors of Desser and Garfield (Md.), Inc., effective as of the date of acceptance of the original offer.

"3. An affidavit from the president of Desser & Garfield (Md.), Inc., that there are no existing or contingent obligations or liabilities of Desser & Garfield (Md.), Inc., save and except that certain mortgage of approximately $6 million to Albert Ernest encumbering the lands in Charles County, Maryland, known as Linda City, and that the stock of Desser & Garfield (Md.), Inc., is not encumbered or pledged in any way whatsoever.

"4. A certified copy of a resolution of the Board of Directors of Lefcourt Realty Corporation authorizing the sale of all of the stock of Desser & Garfield (Md.), Inc., to Continental Mortgage Corporation or its nominee, and in consideration of such approval of the Board of Lefcourt Realty Corporation to cancel any obligations that might exist from Desser and Garfield (Md.), Inc., to Lefcourt Realty Corporation.

"5. Delivery of all books, records and documents of any nature whatsoever relating to Desser and Garfield (Md.), Inc., including evidences of title.

"6. A complete list of all assets of every type and description owned by Desser and Garfield (Md.), Inc., as of April 1, 1961, together with a certification that no assets have been disposed of subsequent to that date.

"7. Certification from a reputable and recognized title attorney or a recognized title insurance company to the effect that the fee simple title to the approximately 7800 acres of land located in Charles County, Maryland, known as Linda City, is vested in Desser and Garfield (Md.), Inc., free and clear of all liens, encumbrances, easements or rights-of-way, except the following:

"a) A mortgage indebtedness of approximately $6 million to Albert Ernest;

"b) A right-of-way through the property known as 'The Window' or 'Entrance' running to Albert Ernest;

"c) An easement to Charles County Sanitary District Commission authorizing that Commission to install sewer and water lines in the center of the road known as Smallwood Drive."

I ask you this, Mr. Johnson: State whether or not you obtained an extension of the acceptance date or dates of these proposals? A. I did, there were negotiations mostly on the telephone between Lykes Boykin, Mr. Robinson and myself and at the expiration there was an extension which I secured.

Q. And that extension was to what date? A. I do not recall now but I think around the 21st, or 20th.

Q. You do not have a copy of anything in writing as to that, I understand? A. The extension was verbal.

* * * * * *

[Tr. 3362-3399]

Q. Is this the $6 million note of April 21, 1961, which was identified a few minutes before? A. Yes.

Q. I think you said you did not prepare this? A. I did not prepare that note. I had to review the note in order to work on the amended modification of the agreement.

Q. Now, you have testified that as to the papers which you worked on and you have also testified that as to certain documents you did not work on them; now, as to those you did not work on, will you state whether or not it was necessary for you to examine them and study them in connection with the work that you did do? A. There were very few I did not work on but those I did not had to be reviewed in order to prepare or work on the subsequent papers.

(Mr. Doub) I offer the note that has been identified by the witness.

(The Clerk) Defendant Johnson exhibit 76 marked in evidence.

(Defendant Johnson exhibit 76 marked in evidence.)

By Mr. Doub:

Q. Now, Mr. Johnson, do you know whether these written offers accompanied by checks to be held in escrow by Mr. Lykes Boykin—do you know whether those offers were accepted or rejected? A. The specific ones that you have in evidence, those were rejected. The checks returned, but soon thereafter with further negotiations in which the checks were accepted.

Q. Now, you have testified that the negotiations for a loan to Desser & Garfield had fallen through and the offers by First Continental Mortgage Company to buy the stock of Desser and Garfield had been rejected in the latter part of April, 1961. What were you then requested to do by Mr. Edlin or by Mr. Robinson? A. The letter of April 19, 1961, I was advised in that, there were interests, outside interests,

I think it was mentioned as New York or Chicago, that were interested in going forward with this development in Southern Maryland near Waldorf, and I was requested to prepare a Maryland incorporation.

Q. And what was the name to be of that company? A. The Charles County Land Company, Inc.

Q. And were you also asked at the same time to incorporate a Virginia company? A. Yes, in negotiations there were some 4,000 acres, at Brooke, Virginia. The interested group were combining the two tracts, the Maryland and Virginia, and I was asked also to provide a charter for the Virginia Company known as Leisure City.

Q. Now, about when were you asked to do that? A. The request for the Maryland Corporation, if I recall, was around April 26, 1961, and about the same time for the Virginia tract.

Q. Now, what did you do upon receipt of those requests? A. Well, the Maryland Company—I immediately telephoned Mr. Harry Adelberg, gave him instructions over the phone that I desired a corporation to be formed immediately. I set forth what the purposes were for the corporation.

Q. You told Mr. Adelberg? A. I also set forth the other provisions as to stock, resident agent, and the required provisions by law for Maryland corporations. And at the same time, I then communicated with Mr. Hunter Andrews of Hampton, Virginia, and asked that he prepare a charter for the Leisure City Land Company.

Q. Now, what did Mr. Edlin and Mr. Robinson tell you as to the proposed ownership of the stock of these two companies? A. I was told that there was a group that Mr. Edlin was spokesman for that were interested in going forward with the development of both the Maryland and Virginia tracts.

Q. Now, what was the status of the Desser & Garfield $6 million mortgage at the end of April, 1961? A. Well, the extensions that we had prepared were to expire on April

30, 1961. There had been, I think, some seven extensions up to that time. So, the mortgage, while not in default, would expire on April 30, 1961 as to its terms of payment.

Q. Did you have any correspondence in May of 1961 with Hunter Andrews, a lawyer in Hampton, Virginia? A. I had both correspondence and telephone calls with him.

Q. Did you receive this letter from Mr. Andrews dated May 9, 1961? A. Yes, but I had previous correspondence and I had telephone calls prior to that.

(Mr. Doub) I offer Mr. Andrews' letter of May 9, 1961, Your Honor.

(The Clerk) Defendant Johnson's exhibit 77 marked in evidence.

(Defendant Johnson exhibit 77 marked in evidence.)

(Mr. Doub) Johnson exhibit 77—a letter dated May 9, 1961, from Hunter B. Andrews:

"Dear Congressman:"

And it says "Re Leisure City Land Corporation."

"As I had informed you last week, the Virginia State Corporation Commission granted a charter to the above corporation on May 2, 1961, and I am enclosing herewith for your records a letter showing the date of incorporation together with stock statement which must be issued before the corporation can commence business.

"We have secured the seal but unfortunately the maker of the seal made an error in the name and we have returned the same to be corrected. It appears, whenever you are in a rush, someone will make an error and I can assure you that they did not carry out our instructions.

"Very truly yours."

By Mr. Doub:

Q. Is this a letter of yours—an office copy of a letter to Mr. Andrews of yours of May 18, 1961? A. It is but, Mr.

Doub, there was prior correspondence in which a memorandum was sent to Mr. Andrews setting forth the capitalization and some other features that were to be incorporated in the charter. If I am not mistaken, I think that I sent him a copy of the Maryland charter showing the purposes for which this corporation had been formed. I am not positive of that but that is my best recollection.

(Mr. Doub) I offer this, Your Honor, the last letter of May 18.

(The Clerk) Defendant Johnson exhibit 78 marked in evidence.

(Defendant Johnson exhibit 78 marked in evidence.)

(Mr. Doub) I will not read it, Your Honor.

By Mr. Doub:

Q. I show you a letter from Mr. Andrews to you of May 22, 1961 and ask you if you received that letter with its enclosure? A. I did.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson exhibit 79 marked in evidence.

(Defendant Johnson Exhibit 79 marked in evidence.)

(Mr. Marion) What was the enclosure, Mr. Doub?

(Mr. Doub) Copy of the charter.

(The Clerk) Articles of Incorporation of Leisure City Land Corporation.

(Mr. Robinson) May we see it, Mr. Doub?

By Mr. Doub:

Q. Now, will you state, Mr. Johnson, whether or not you and Mr. Robinson prepared a letter from yourself to Frank Boykin dated April 29, 1961? A. Mr. Doub, I prepared the letter. Maybe Mr. Robinson made suggestions on it but it

was a letter prepared by me under date of April 29, 1961, after a rough draft beforehand.

Q. Do you have that letter? A. I do.

Q. Is this it? A. Yes.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson exhibit 80. Marked in evidence.

(Defendant Johnson exhibit 80 marked in evidence.)

(Mr. Doub) Johnson's exhibit 80 is on the letterhead of Thomas F. Johnson, dated April 29, 1961, addressed to the Honorable Frank Boykin, Washington Hotel, Washington, D. C. "Re Purchase and Assignment of $6 million Mortgage on Property known as 'Linda City' in Charles County, Maryland."

"Dear Frank:

"I enclosure herewith cashier's check in the sum of $125,000 dated April 25, 1961, payable to Tensaw Land and Timber Company, pursuant to your instructions of an earlier date, together with an assignment from Albert Ernest, Charles County Land Company, Inc., of that certain Charles County Land Company, Inc., of that certain mortgage recorded among the land records of Charles County, Maryland in Liber 41, pages 497 through 545 to be executed by you as an attorney in fact for Albert Ernest, the owner of record of said mortgage and pursuant to its previous authorization, together with agreement of sale for said mortgage between Albert Ernest and Charles County Land Company, Inc.; said agreement to be executed by you as attorney in fact for Albert Ernest, pursuant to the authority previously vested in you by him.

"The above-mentioned check is delivered to you in escrow both individually and as agent for Albert Ernest. And you are to hold said check in your possession until the happening of the following events.

"1. Recording in the land records of Charles County properly executed power of attorney from Albert Ernest to you containing the full authority to execute deeds, mortgages and any and all other contracts requisite to carrying out the full purpose and understanding of the assignment and agreement enclosed herewith.

"2. You are to record said assignment and to deliver to me for the said Charles County Land Company, Inc., a certificate of title certifying that the fee simple title to the land encumbered by said present mortgage are free and clear of all encumbrances, save and except the mortgage heretofore referred to and recorded among the said land records of Charles County, Maryland.

"3. Receipt of a letter from the undersigned to the effect that he has conferred with the necessary agencies and that there are no existing road projects which would interfere with the development of said land and that there are no zoning restrictions or regulations which would prohibit or interefere with the proposed improvements on said land.

"4. The delivery of a letter by you to Charles County Land Company, Inc., stating that you have conferred with the necessary state officials and confirming the acceptance of a lagoon sanitation system for 1500 users upon the property in question.

"5. Consummation of a sale to Leisure City Land Corporation of all those tracts of land known as the Brooke property situate in Stafford County, Virginia.

"Upon compliance with the aforesaid provisions, you are hereby instructed and authorized to deliver to the said Albert Ernest the cashier's check in the sum of $125,000.

"The examination by the Title Insurance Company shall disclose any encumbrances other than the mortgage being purchased or any cloud or lien affecting title

of the property then, in such event the mortgagee is to be allowed a reasonable time in which to eliminate such encumbrances or liens or to clear any such cloud upon the title.

"Provided, however, the mortgagee shall fail or refuse so to do or shall be unable to so perform, then in such event the said check of $125,000 shall be returned to Charles County Land Company and, upon receipt of said check said corporation shall forthwith cause to be reassigned the mortgage to the said Albert Ernest.

"Thanking you for your cooperation in this matter, I am,

"Sincerely yours,

s/"Thomas F. Johnson."

By Mr. Doub:

Q. Now, you wrote that letter to Mr. Boykin upon whose instructions—I should say "prepared and sent it." A. Mr. Edlin who was spokesman for the interest in the Charles County Land.

Q. This contains the following escrow understanding?

"I hereby accept the conditions imposed upon me as escrow agent in connection with this offer, and I agree to abide by the terms thereof and asknowledge receipt of said cashier's check in the amount of $125,000.

s/"Frank Boykin."

Did Mr. Boykin execute that acceptance of the escrow responsibility? A. Well, there was later an assignment of the mortgage pursuant to these negotiations and with the letter as it states there, with agreements and modification provisions of the $6 million mortgage.

Q. Now, there were enclosures with that letter? A. Yes.

Q. Do you have those with you? A. I have the purchase agreement but I do not have copies of the modification of the mortgage.

(Mr. Marion) Mr. Doub, you asked him a question a moment ago and I did not understand whether he answered it as to whether Mr. Boykin executed the escrow agreement at the bottom of that letter. He went on to say that something was assigned but he did not say whether that was accepted by Mr. Boykin.

(The Witness) To answer the question, this was on the 29th of April. There has been testimony that three secretaries worked with Mr. Robinson, and myself in Baltimore. The papers were prepared and sent to Washington. Ultimately there was an assignment of the Ernest mortgage.

(Mr. Marion) He still has not answered the question.

By Mr. Doub:

Q. Are you saying that Mr. Boykin executed the escrow agreement accepting its terms, or you do not know? A. I do not know as to the actual there, but I know the assignment was effective.

Q. You have handed me a paper marked "Purchase Agreement" which is also dated April 29, 1961. Is that one of the enclosures with your letter to Mr. Boykin? A. Yes.

(Mr. Doub) I would like to offer it, Your Honor.

(The Clerk) Defendant Johnson exhibit 81 marked in evidence.

(Defendant Johnson exhibit 81 marked in evidence.)

By Mr. Doub:

Q. Would you summarize the terms of this purchase agreement? A. This is an agreement between Albert Ernest who is the holder of the $6 million mortgage, and the Charles County Land Company under date of April 29, 1961, and it is an agreement whereby the land company agrees to purchase by assignment the $6 million mortgage. In the agreement a discount of the mortgage was agreed upon which would reduce the mortgage to $5,675,000. There was provision made that if this mortgage were paid off within a

certain time, that it could be paid off for that amount. Otherwise, it would revert to the $5,875,000, which would be the figure with the $125,000 that was paid by way of assignment.

Also, it was—there was agreement that the Ernest mortgage which had been originally prepared in 1958 was only for a period I believe of ten years. In this agreement it was stipulated that there would be an extension of the payment plan on the mortgage to 17½ years. And also that attached were six pages of modification of the Ernest mortgage and friefly those modifications called for a 1,060 acres that could be released for immediate development from the Ernest mortgage.

Q. Is it "could be released," or "were released"? A. Would be released. There was also provision that there would be a bridle path, if I recall, eleven feet wide around the entire perimeter of the 8,000-some acres. There were also provisions in the modification as to the timber, as to the rights there of cutting certain of the timber. And other provision in the modification.

Q. Were there any changes in the release clauses of that mortgage? A. Yes, in release clauses there were changes. I don not recall for the moment just what.

Q. Now, what, if anything, did you have to do with the preparation of that form of agreement which you have just summarized? A. My work, and with Mr. Robinson, we were working a loan. My work dealt with the letter to Mr. Boykin with the agreement and the modification agreements.

Mr. Robinson at the time worked, as I recall, on a loan agreement between Charles County and Colony Savings and Loan.

Q. First Colony? A. Yes.

Q. I notice that that draft of a purchase agreement is on the stationery of Mr. Harry Adelberg. Will you explain where you and Mr. Robinson did that work? A. It was

developed, I think, by testimony, that I had the use of Mr. Adelberg's office, his facilities, and frequently on weekends, I took advantage of that offer and on this particular Saturday Mr. Robinson and myself came to Baltimore. Whether Mr. Adelberg was in, I do not know. He may have been but he did not participate, as I recall, in any of the preparation of the papers.

Q. Well, now, is that the Saturday that he referred to in his testimony as obtaining some secretaries to come in and work on an emergency basis? A. Mr. Doub, that was the testimony we had three secretaries working that date at different times, or at the same time.

Q. Now, it is undisputed that Ernest assigned to Charles County Land Company the Ernest mortgage for $6 million and that Frank Boykin received a check for $125,000 on account of the purchase of that mortgage by Charles County Land, and also a check for $125,000 on account of the purchase of the Virginia property by Leisure City Land. Were you present at the meeting when this assignment was agreed to and executed? A. No, I was not present when the checks passed or the papers were signed.

Q. Did you shortly thereafter hear, however, that those papers had been executed? A. I had knowledge soon thereafter.

Q. No, what did you do on May 1, 1961? A. I met with Mr. Robinson on that date and Mr. Edlin. At that time the mortgage was in default. The $5,875,000 mortgage that had been reduced by the payment. I was asked to proceed with foreclosure of that mortgage and whether I would handle the legal work.

Q. You were asked to handle the legal work of Charles County Land? A. Yes, that is for the Charles County Land, in Southern Maryland. So, on the first of May, 1961, I went to La Plata and the first call was at the offices of Mr. De Sales Mudd. I spent—as he testified—some one and a half hours in conference with him. I had been told that Mr.

Mudd was familiar with the property in question. That he had records that would be of assistance to me.

Q. Are you referring to the title records? A. To the title records of the tract in Southern Maryland; Mr. Mudd was very cooperative. He made available his entire file.

I told him I had been asked to proceed with foreclosure of this some $6 million mortgage. I would like to have him assist me in the foreclosure as local attorney in La Plata. Mr. Mudd advised that he had been doing work for Desser & Garfield who were the mortgagors. If I am not mistaken, he had been on a retainer. That he felt there might be some question as to his position if he assisted in the foreclosure.

Ultimately, he decided that he felt that he should not join in the foreclosure. I asked him about the plats to the property, that I wanted to get a complete list of all of the plats so that there could be a composite plat of the 8,000-some acres.

He told me that the county surveyor, a Mr. Steffens, had those plants. He telephoned Mr. Steffens and on May 21, I went over to the Surveyor, found him at his office.

Q. Do you mean—did Mr. Mudd make an appointment for you with Mr. Steffens that afternoon? A. He did but I may say before I went to Mr. Steffens' office, I went over whether there was any local statute dealing with foreclosures as to the cost, the commissions, and other information, whether the mortgagee had copies of the mortgages.

Q. You are talking now of your conversations with Mr. Mudd? A. Yes. I then went over to Mr. Steffens' office following the telephone call that Mr. Mudd made and Mr. Steffens had to use a very large room to get all the plats laid out in the room, because there were so many individual tracts comprising this 8,000 acres.

I spent considerable time with Mr. Steffens, going over the different plats because I wanted to consolidate them and to see whether or not we could work out a perimeter survey of the entire area.

I then stopped by Mr. Carrico's office. That is Mr. Rudlph Carrico. I spent very little time. I told him I would call him on the phone. That I would call him to assist me in a local foreclosure matter.

Then I returned to Washington.

Q. Now, what occurred the following day? A. The following day I had a meeting in my office, that was on May 2, 1961. Present was Mr. Edlin, Mr. Robinson, and Congressman Boykin.

I gave a report on my findings in La Pata, the conference that I had particularly with Mr. Mudd.

Q. Before you get into that, I forgot to ask you, Mr. Johnson, whether you had any discussion in La Plata with Mr. Mudd or Mr. Carrico or both about the standard foreclosure fees in that county? A. There was discussion, yes, and as provided in the mortgage. I found that Charles County, the yhad a straight 6 per cent commission based on the principal indebtedness.

Q. You mean—did Mr. Carrico and Mr. Mudd tell you that? A. It was either one or the other but later, to make sure that there was no dispute, much later, I called Mr. Carrico and he again confirmed it.

Q. Well, now, was he stating what was the general practice in the county? A. The general practice under the rules of practice that they had a straight 6 per cent commission allowed attorneys in foreclosing proceedings.

Q. All right.

Now, would you go on and tell about your meeting with Mr. Boykin, Edlin and Robinson, on May 2? A. At the meeting, I reported what had transpired. They stated, or Mr. Edlin and Mr. Robinson reaffirmed my continuing as foreclosing attorney of the $6 million mortgage.

I told them that it would be a rather substantial cost. It had been brought to my attention that under the recorded mortgage, the Ernest mortgage, the provisions

dealing with commissions and I was referred to Section 20(a) of the Mortgage in which it had a very peculiar provision dealing with commissions, that the general terms in that provision, that in the event of sale there would be, if I may read this provision there.

Q. Yes. A. That the terms of sale—

(Mr. Tydings) Will you identify what he is reading?

(Mr. Doub) From the $6 million mortgage of 1958 with Desser and Garfield—Ernest, is not that correct?

(The Witness) Mr. Doub, I only had a copy of the mortgage at that time. Since then I have secured a certified copy of the Ernest Mortgage in respect to this transaction which I am reading from, the certified file copy by the clerk of the Court.

> That, in the event of sale, the proceeds first to the payment of all expenses incident to such sale including a fee and a commission to the party making the sale of said property equal to the commissions allowed trustees for making sale of the property by virtue of the decree of a court having equity jurisdiction in the State of Maryland.

Second, to the payment of claims, and so on.
Now, the very unusual provision in the next paragraph:

> "And it is further agreed that if the property aforesaid shall be advertised for sale and not sold under the provisions of this mortgage, then the party or parties rightfully so advertising the same shall be entitled to one half of the commissions above provided computed on the amount of the debt secured and remaining unpaid."

In this case there was a debt of approximately $6 million, that if the sale were made and brought the proceeds it would be a commission of $360,000 under the terms of the mortgage and under the provisions as set forth in the last paragraph I read, that in the event the sale was with-

drawn, there would be one half commission. In other words, $180,000, attorney's fees that would be entitled the attorney,that the attorney would be entitled to in the foreclosure proceedings.

By Mr. Doub:

Q. What did you agree with Mr. Edlin and Mr. Robinson would be your fee for handling this foreclosure case? A. Well, at that point we got into rather a full discussion because the parties present were amazed that the costs of foreclosure would amount to any such amount of money. I was asked what would be a reasonable fee for the foreclosure of the mortgage and handling of it, and I told those present that I thought $35,000 or $40,000 would be the normal cost. I was then told that that was still a lot of money.

And the discussion went on as to the amount of work that I had done, that is, the previous months on this matter.

I thought naturally that should be considered, but $35,000 or $40,000 would be a very substantial amount. So agreement was reached where I suggested a fee of $25,000. It was suggested with that fee, I would be paid $10,000 immediately and the balance soon thereafter and at the time they were under negotiation with some New York interest or some other parties, and thought the matter would be closed very shortly.

Q. Was these any reference to the fact that $25,000 was less than one half of 1 per cent of the indebtedness? A. Yes, I brought out in the discussion that $25,000 was less than one half of one per cent of a commission in this transaction.

Q. You mean of the indebtedness? A. Of the indebtedness. As I say, Congressman Boykin was present at the time.

(Mr. Doub) Mr. Tydings, is that mortgage in evidence?

(Mr. Marion) The purchase money mortgage. Mr. Boy-

kin put it in, I think what was Mr. Johnson's copy for identification. No. 10 or 11 of Mr. Boykin's Exhibits for identification.

(The Court) I do not think Mr. Boykin has put anything in evidence yet.

(Mr. Marion) It was offered for identification by Mr. Boykin.

(Mr. Doub) Has the Government put in anything on that mortgage? What is it?

(The Clerk) Defendant Boykin's Exhibit 11 for identification.

(The Witness) Mr. Doub, in further answering I did not collect the $25,000.

By Mr. Doub:

Q. Was anything said as to whether this fee would include all legal work in supervising the title work with respect to both that of the Waldorf property and the Virginia property? A. Yes, sir, in the discussion I think it was Mr. Edlin who was spokesman for the group who stated that it was to include also clearing up title, not only to the Charles County but to Leisure City. That is the tract in Virginia and I was to supervise the legal work dealing with those tracts.

Q. Was there any agreement as to the continuance or discontinuance of the $800 a month retainer which you has been receiving? A. It was as of January, I had had a retainer of $800 a month. And, pursuant to this agreement that retainer discontinued as of April 30, 1961.

Q. What was the date of the last retainer check which you received? A. I received my last retainer check on March 30, 1961, for the month of April.

Q. Now, what, if anything else, did you do that afternoon? A. I told those present that pursuant to the instructions to foreclose this mortgage that I had to comply

with the terms of the mortgage and to give formal notice to the mortgagor and in reviewing the mortgage on page 20, it states as to how that notice will be given, and where it should be sent, which was in California.

Q. Do you have that notice there? A. Pursuant to the mortgage, it is on page 20 of the mortgage, that it was to be in care of Desser and Roe, 444 North Camden Drive, Beverly Hills, California.

(Mr. Doub) This letter is dated May 2, 1961:

Q. Do you have the notice which you prepared and sent? A. I do. On May 2, 1961, I dictated, signed and sent by registered mail notice to the address given, signed it as attorney for the mortgagee.

Q. And that was the notice of default? A. Notice of default.

Q. And is this an office copy of the letter to which you have just referred? A. That is the original office copy.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson exhibit 82 marked in evidence.

(Defendant Johnson exhibit 82 marked in evidence.)

"Desser and Garfield (Md.) Inc.

"C/O Desser and Rau

"444 North Camden Drive

"Beverly Hills, California

"Gentlemen:

"Pursuant to instruction from the mortgagee, this is to advise that as of this date that you are delinquent and in default in the terms of payment of that certain mortgage executed and agreed to by you dated the 27th day of January, 1958 and recorded among the land records of Charles County, Maryland in libre 41,

page 497 thru page 545, which said delinquent payments are in the sum of nine hundred and forty-four thousand dollars ($944,000.00) together with accrued interest thereon and that you are hereby directed to cure said default and to make payment in full of said sum and interest not less than 30 days from this notice; said notice being given pursuant to paragraph 7 of Section A of the above described mortgage and you are further notified that if said default is not cured and said payment not made as herein requested then all sums become due forthwith under said mortgage together with the accrued interest thereon as fully and as completely as if the said aggregate sums were originally stipulated to be paid on the due day after this notice anything in said mortgage or notes secured thereby to the contrary notwithstanding.

"Very truly yours,

"Thomas F. Johnson

"Attorney for Mortgagee."

By Mr. Doub:

Q. Now, what did you do the next day about sending a second notice of default? A. Following that notice, I reviewed again the mortgage. I probably was over cautious of the tremendous amount involved and in reading my notice, I was concerned whether or not it was as clear and whether it did comply with the terms of the mortgage. I particularly was concerned with the wording of the 30 days notice, whether it should not have been 31, 30 full days. I telephoned Mr. Adelberg and told him of the foreclosure proceedings I had had some time previous, a case that I thought was on the point, would he review the law for me. I would call him back or he would call me.

I called Mr. Adelberg. We had conferences. He agreed with me that there should be a rewording of the notice; so, on May 3, I dictated, prepared and dictated another notice together with accompanying letter.

Q. You used the word "we had conferences." You did not have any conferences? A. By telephone.

(Mr. Doub: I offer the second notice of default, May 3, 1961, with Mr. Johnson's covering letter.

(The Clerk) Defendant Johnson's Exhibit 83 marked in evidence.

(Defendant Johnson Exhibit 83 marked in evidence.)

(Mr. Doub) I will only read your covering letter dated May 3, 1961.

"Desser & Garfield.

"Gentlemen:

"In rereading my notice mailed under yesterday's date, I felt there might possibly be some mis-interpretation as to the intentions of the mortgagee to accelerate the indebtedness and I am issuing a second notice which I feel is perhaps clearer and more specific.

"In regard to the two notices, you are advised that you may consider the second notice herewith enclosed as governing the period of time as provided in paragraph 7, Section A of the Mortgage securing the payment of your indebtedness.

"Very truly yours."

By Mr. Doub:

Q. Now, did you make another visit to La Plata in May, 1961? A. I did. I made several visits to La Plata during June, 1961.

Q. I said in May? A. I do not recall in May. I may or may not. I think I was there on the 19th.

Q. But you are not certain? A. I am not certain.

Q. Now, how about in June? A. Yes, I was in La Plata on several occasions in June.

Q. Who was with you? A. I think Mr. Robinson was with me on most of the occasions. Possibly he was not there on all of them but I know he was there.

Q. Wait a minute. We are only talking about one or two.

(Mr. Marion) Are we, or aren't we?

(The Court) It is the witness who is testifying not you. Unless you want to be sworn. The witness has said.

(Mr. Doub) I think my witness is getting tired, Your Honor.

(The Witness) I think I was there on June 5 and June 8. There is a possibility I was there on another occasion.

By Mr. Doub:

Q. Whom did you see when you were there? A. I saw Mr. Mudd, that is, Mr. De Sales Mudd, and also Mr. Carrico, and on one of the occasions, I visited the Clerk's office in La Plata.

Q. What did you do there? A. The purpose was to see the plats that were recorded with this foreclosure. I was concerned as to the water rights on the 97 acres which Desser & Garfield had in fee and I wanted to make sure that the easements ran to the property under the foreclosure proceedings.

So, the purpose was to review the maps at the clerk's office; the plats had been recorded.

Q. Well, now what was the next step as to the foreclosure of the mortgage with specific reference to the form of advertisement? A. Mr. Carrico, I asked Mr. Carrico to assist me, personally, in La Plata on this foreclosure. We had had telephone conversations during this period, several. I told him to prepare a copy of the advertisements and to send me such a copy.

Q. Now, did Mr. Carrico prepare a draft of the form of advertisement of the public sale of this property? A. Yes.

Q. Did he send that to you? A. He either sent to to me or it came to my office. I do not recall which, but I received a copy of his draft.

Q. I think you testified that he met with you in your office? A. Possibly so.

Q. On one occasion? A. He could have.

Q. Well, now, I show you Johnson Exhibit 31, 32; the first Mr. Carrico identified as his draft that he prepared of the form of advertisement and the second as I think, after changes had been made by you. Will you tell the jury what changes you made in his form? A. Well, first I suggested and it was changed, the first page dealing with the description. That was all rearranged.

Second, he had the date of July 11, and I changed that to July 10, also, he had no provisions as to taxes or terms of sale.

Q. You mean terms of payment? A. No, no, as to adjustment of any purchaser as to adjustment on county and state taxes.

And I notice in my handwriting, I changed that there should be an adjustment on day of sale of all county and state taxes. Also as to terms of sale. I suggested, and there was a change as to the terms of sale.

Q. Now, I would like to direct your attention to the problem that arose as to the amount of the required bond in connection with this foreclosure sale. What did Mr. Carrico tell you would be the required amount of the bond? A. He told me in his telephone conversation to me, that they would require a $6 million bond. That was a bond, a corporate bond to be filed in the proceeding.

I asked him what the costs would be on a $6 million bond?

He told me $24,000 premium.

I told Mr. Carrico that I thought he should take it up

with the Court because such a bond in my opinion, was not necessary.

I talked with him again on the telephone some days following. He told me that he had taken it up with the Court and the Court had requested the $6 million bond.

We had more conversations over the phone. I told Mr. Carrico to please go back to the Court, that my experience in foreclosing of mortgages was that it is entirely at the discretion of the Judge as to the amount of the bond, that in our case there was very little likelihood that there would be any outside purchasers, no risk on a bond. That certainly with unimproved property, and I mentioned, Judge Digges, who was the Local Judge, should not require any such bond, $6 million bond.

In the meantime, I wrote to a company in Chicago, getting a price on a bond or what their premium would be in event that Judge Digges would insist on the $6 million bond.

Following my conversation, Mr. Carrico reported to me he did go back to see Judge Digges. Judge Digges reconsidered, reduced the bond from $6 million to $600,000, a reduction in premium from $24,000 to $2400 for the bond.

Q. What happened next with respect to the bond premium, did you take exception to the $2400 later? A. When the property was withdrawn later by virtue of settlement on the day sale, I got a statement from Mr. Carrico because, under the arrangements, all bills were to come to me.

He sent a statement for $2400. I called Mr. Carrico and told him the property had not been sold, that I felt that there should be further reduction in the bond, and, as a result, he communicated with the bonding company which was the U.S.F. & G., and was able to reduce it from $2400 to $1200 for the bond premium.

Q. Now, returning to June, 1961, prior to the date of the foreclosure sale which was scheduled for July 10, 1961,

what did you do with respect to a tax matter? A. I went into that but I do have before me a copy of letter to the company in Chicago because I was disturbed about the $2400 premium which Judge Digges originally requested.

Q. And is this your letter to S. M. Simon & Company dated 5, 1961? A. That is copy of a letter addressed to me.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson Exhibit 84 marked in evidence.

(Defendant Johnson Exhibit 84 marked in evidence.)

(Mr. Marion) Mr. Doub, Congressman Johnson was referring to a couple of other papers up there a while ago when he mentioned some dates in June. I wonder if we might have those marked also for identification?

This may be one of them, I am not sure.

(Mr. Doub) Is there another letter there on this same subject?

(Mr. Marion) You referred to two dates in June that you say you were in La Plata and I think you referred to something in your file and I just wondered whether you could set that aside.

(The Witness) I do not believe I had anything in my file on that, no.

May I say that I checked with Mr. Mudd's diary while I was there and some others.

By Mr. Doub:

Q. Let us return to June prior to the foreclosure sale, did you have any occasion to work on a tax matter relating to this? A. I did.

Q. To this sale? A. I did considerable work and research as to a tax problem that could be presented by this foreclosure. It was most likely that the property would have to be bid in by Charles County Land at the sale.

The result of that was it resolved itself into whether or not if they were the bidders that the government would state that there was a sale and therefore, a tax liability either on the mortgagor or possibly on the mortgagee.

I came to Baltimore and worked on that in the office in Baltimore. There was a young man who had been with Internal Revenue Service that Mr. Robinson, himself worked with one day here. We made a search of the Maryland law. As a result of our conferences with this tax man and with the review of the Maryland law, we concluded that the proceedings or I concluded that the proceedings should be in rem rather than in personam, meaning that we should proceed on the mortgage. That the note for the $5,875,000 should be held by the mortgage-holder, and that if a new mortgage were given, that would be as security to the old note, that the note had no personal guarantee.

It was a note without any personal liability. Therefore, no one could be hurt.

Q. By not extinguishing the note? A. That the debt would not be extinguished. Therefore, there would be no tax difficulty.

So, pursuant to that, I did not file the note. I had the note kept at the First Continental Saving and Loan office.

Q. And do you have the long distance telephone bills of the C & P Telephone Company for the month of June, 1961? A. I do.

Q. Is this it? You are handing it to me? A. Yes.

(Mr. Doub) I would like to offer this, Your Honor, dated June 30, 1961.

(The Court) Is there objection?

(Mr. Tydings) Is this the same type of bill which has been offered before? In other words, the calls charged to the Congressman's Congressional office?

(Mr. Doub) Yes.

(The Clerk) Defendant Johnson's Exhibit 85 marked in evidence.

(Defendant Johnson Exhibit 85 marked in evidence.)

(Mr. Tydings) Let us take a look at it.

By Mr. Doub:

Q. How many telephone calls are recorded on the long distance telephone bills of the telephone company in the month of June from you to Mr. Carrico and Mr. Mudd in that month?

(Mr. Tydings) Your Honor, I am going to have to object to the form of the question. I think you are going to have to prepare a foundation by asking Mr. Johnson whether or not he made every telephone call which appears on there first. Because there has been a lot of testimony about other people using the Congressional office during this period of time.

I object to the form of that question as asked.

(The Court) Well, if he remembers whether he did. If he remembers how many calls he made.

(Mr. Doub) He could not possibly remember such a thing, Your Honor.

(The Court) If he does not, the document speaks for itself. Unless it refreshes his recollection.

(Mr. Doub) That is what I am asking him about. How many calls are recorded on there from his office to Mr. Mudd or Mr. Carrico?

(The Court) That was not what you asked. If you ask the question that way, it meets Mr. Tydings objection. If you amend it to "the office," Mr. Tyding' objection is met.

By Mr. Doub:

Q. How many calls are recorded on there from your office

to Mr. Mudd and Mr. Carrico during the month of June, 1961? A. First of all, during the month of June, 1961, my statement for the month shows that Johnson, being myself, the person calling made nine calls to La Plata, to either Mr. Carrico or Mr. Mudd.

* * * * * *

[Tr. 3400-3416] By Mr. Doub:

Q. Mr. Johnson, I neglected to have you identify this letter which I am now handing you? A. Yes, sir.

Q. Did you receive that letter? A. I did. That is a letter from the executive vice president of the First Continental Savings and Loan in which they acknowledge as holding the $5,959 note of the D&R which is Desser and Garfield.

I have previously testified that the idea was not to extinguish the indebtedness under the note but to proceed in rem rather than in personam.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson's Exhibit 86 marked in evidence.

(Defendant Johnson Exhibit 86 marked in evidence.)

(Mr. Doub) Dated May 5, 1961 addressed to Thomas F. Johnson, Attorney at Law, Berlin, Maryland.

"Dear Mr. Johnson:

"This will acknowledge there is being held at your request on deposit certain promissory note in the principal amount of $5,959,000 dated March 31, 1959, and executed by D.G. & R., Inc., by Arthur Desser, its president, and attested by its assistant secretary.

"Said note will be delivered to you at your request.

"Sincerely,

/s/ "Earl Kunkel,
"Executive Vice President."

By Mr. Doub:

Q. Now, Mr. Johnson, when Mr. Desser heard that a mortgage foreclosure sale was scheduled for July 10, 1961, what did he do? A. He communicated with Mr. Lykes Boykin at the time representing Desser & Garfield and made a very strong protest to the foreclosure.

Q. Did there then ensue any discussion with respect to a settlement with Desser & Garfield? A. Yes, sir.

A discussion that first Mr. Desser wanted to proceed on to develop the property. Mr. Lykes Boykin revealed the amount of money that had been spent on the development by Desser & Garfield, which involved several hundreds of thousands of dollars. And negotiations continued in an effort to reach some settlement with Desser & Garfield.

Q. Now, during the week preceding the July 10 date, the date of the sale, were those discussions continuing with respect to a settlement? A. They were and my discussions with—my discussions were with Mr. Boykin.

Q. And what was he demanding as in settlement? A. Mr. Lykes Boykin?

Q. On behalf of Desser & Garfield. A. Mr. Lykes Boykin advised me that he had instructions from his client that if they desired to purchase the Desser and Garfield stock which carried with it legal title to the 97 acres known as the "Window" together with the note which was owned by Lefcourt of the Charles County Leaf which is a newspaper, of $33,000 that they must have $250,000 by way of settlement.

Q. What did Mr. Desser and Mr. Lykes Boykin claim had been spent by Desser & Garfield, could you give us any breakdown on the figures as to that? A. Yes, that was discussed.

And Desser & Garfield, as I stated, owned in fee the 97 acres which was referred to as "the window" which abuts on route 301 in Southern Maryland.

Q. So that would not be subject to the mortgage foreclosure proceedings? A. That was not a part to that, not part of the mortgage procedure but presented a real problem because the remainder of the property—some 8700 or 7900 acres were on the back or to the back of "The Window" and Mr. Desser through Mr. Lykes Boykin, stated they had paid down—Desser & Garfield, $100,000 at the time that they negotiated the purchase of the property, they had also paid $105,000 for the release of the 97 acres. They had paid some interest charges amounting to approximately $60,000 and that the engineering cost as well as certain promotional ran in excess of $200,000. As a result, they had an estimated half a million dollar investment in the 97 acres.

Q. Will you state whether or not they claimed there was grading and some roads built?

(Mr. Tydings) Mr. Doub, is it my understanding that all of these conversations were made in Mr. Johnson's presence at a conference which Mr. Johnson attended between Mr. Lykes Boykin and himself?

(Mr. Doub) He did not say he was at every conference but he has testified what he has said.

(Mr. Tydings) We are not objecting but we would like to get a little bit clear who was present at these conferences and who was representing whom.

(Mr. Doub) All right.

By Mr. Doub:

Q. Mr. Johnson, will you proceed to answer that question? A. Part of the information came from Mr. Desser, himself, although Mr. Desser was at very few meetings. He had an associate in his office, I do not recall his name, who sat in on one or two meetings. For the most part, it was through Mr. Lykes Boykin and they were at several conferences that this information was given me when I was personally present at these conferences.

(Mr. Tydings) Was anyone else present?

(Mr. Doub) You can ask all this on cross examination, Mr. Tydings.

By Mr. Doub:

Q. Now, what happened on the morning of July 10? A. I received a call about 8 o'clock in the morning that there was a meeting at the Washington Hotel and that is the hotel where Congressman Boykin lives.

I arrived presumably at 8:30 or 9 o'clock.

Q. It was a breakfast meeting? A. It started with a breakfast meeting.

Q. Who was present? A. Mr. Lykes Boykin, Mr. Edlin, Mr. Robinson, and myself.

Q. How about Mr. Frank Boykin? A. I say, Congressman Boykin.

Q. He was present? A. Yes.

Q. How long did this meeting last that day? A. That meeting continued through the morning and whether it went in the afternoon, I do not know but the property was scheduled for sale at twelve noon on July 10th, which was the date of the meeting.

Q. Now, Mr. Carrico testified that at ten minutes after the noon hour, he received word from you of a settlement. Will you tell the jury what the settlement was? A. Well, negotiations were back and forth because Mr. Lykes Boykin had instructions that there must be $250,000.

Q. Dollars paid to Desser & Garfield? A. Paid in settlement of the Desser & Garfield interest. On the other hand, there was representation through Mr. Edlin that his group did not wish to go above $225,000. So the difference was the $25,000. Several times during the morning it looked like there was a meeting of the mind and they had reached an agreement. I would contact Mr. Carrico and tell him

that the sale would be off. Then after further discussion, it would resolve itself that on certain terms of the agreement there was difficulty reaching an accord on those. I would call back Mr. Carrico and tell him the sale was on. Finally, at noon on July 10th, I telephoned Mr. Carrico to withdraw the sale, because a settlement had been reached.

Q. At what figure? A. $225,000.

Q. And did that include the sale of "the window" to Charles County Land? A. It included the sale.

Q. Which was not subject to the mortgage? A. It did. And many other things.

Q. Now, after that agreement was reached on July 10, what did you and Lykes Boykin and Mr. Robinson do? A. Well, there were so many conditions attached to the $225,000 payment that we had numerous meetings throughout the week and even going over to the following weekend and ultimately on July 14 we resolved it in writing.

Q. Do you have there a letter from Mr. Robinson to you? A. I do.

Under date of July 14, 1961.

Q. Did you receive that letter? A. I did.

(Mr. Doub) I wish to offer it, Your Honor.

(The Clerk) Defendant Johnson's Exhibit 87 marked in evidence.

(Defendant Johnson Exhibit 87 marked in evidence.)

(Mr. Doub) It is a letter on the letterhead of W. L. Robinson, attorney-at-law, dated July 14, 1961 addressed to Mr. Johnson.

"Dear Tom:

"I deliver to you herewith, as attorney for Charles County Land Company, Inc., the check of First Continental Savings and Loan Association, Inc., in the sum of $225,000,

payable to Boykin & De Francis, which sum represents moneys being loaned by the said Association to Charles County Land Company, Inc.

"You are hereby authorized to deliver said check to Boykin & De Francis, subject to the following terms and conditions:

" The receipt by you of the following:

"a. Warranty deed to approximately 97 acres of land at Waldorf, Maryland.

"b. Quitclaim deed to the approximately seven thousand eight hundred remaining acres;

"c. Assignment of notes in the amount of $33,000.

"d. Mutual releases by Charles County Land Company, Inc., and its agents and representatives, and Desser & Garfield (Md.), Inc., and its representatives.

"2. The title opinion from De Sales Mudd stating that at the time of the recording of said deeds title to the lands conveyed in said deeds was vested in Charles County Land Company, Inc., subject only to those encumbrances set forth in the letter of opinion of De Sales Mudd, dated July 13, 1961, and effective as of July 12, 1961, at 4:30 p.m.

"3. Satisfactory evidence of the payment in full of any sums becoming due for the following engineering drawings, plans and specifications:

"a. Storm drainage plans and profiles Section 1, street plans and profiles Sec. 1, drainage ditch and set of record plats Sec. 1, all prepared by Whitman, Requardt & Associates.

"b. Sanitary sewer and water main plans and profiles Sec. 1, and outfall sewer plans and profiles prepared by Williams.

"c. One hundred foot scale topography for 3,000 acres, and two hundred foot scale topography for 7,700 acres (partial) prepared by Alster;

"d. Plats of property and plat of ground released by D. G. & R. Inc., prepared by D. H. Steffens;

"3. Various miscellaneous sketches or drawings.

"4. Master plan prepared by Bartholomew, together with payment or satisfaction of the $15,000 claim of Bartholomew, or escrow of $15,000 to guarantee the payment of said sum in the event that liability therefor shall be adjudicated against D. G. & R., Inc., or Lefcourt and in favor of Bartholomew.

"5. Satisfactory evidence that the $33,000 promissory note is the sole obligation from Southern Maryland Publishing Company, Inc., to Lefcourt, D. G. & R. Inc., or their officers, stockholders or employees.

"6. Assignment of any right, title or interest and any and all rights accruing under a certain agreement between Desser Corporation and Charles County Sanitation Commission.

"7. Assignment of any FHA commitments having to do with Linda City and issued to Desser Corporation, together with a waiver by Desser Corporation to any commitment or any rights under such commitment issued to Desser Corporation and having to do with any of the lands known as Linda City.

"Upon compliance with the foregoing conditions, you are, as above stated, authorized to deliver the aforesaid check to Boykin & De Francis.

"Sincerely yours,

/s/ "W. L. Robinson."

By Mr. Doub:

Q. Now, at the end of that letter I notice something signed by you dated July 15, 1961. I ask you if that is in your handwriting and will you read it to the jury? A. It was, and what it is, Mr. Robinson, when I received this

wanted an acknowledgment that I had received the check, so I said:

"Check for $225,000 to be delivered to Boykin attorney, by recording of documents, with title approved for 7,800 acres in question by confirmation of prior opinion. After recording of documents conveying title of said land to Charles County Land Company said opinion by De Sales Mudd, Attorney and escrow for payment or settlement of Bartholomew claim. The other items herein set forth have been satisfactorily approved by the undersigned.

"Thomas F. Johnson, Attorney.

"Dated July 15, 1961."

Q. Now, after receipt of that letter which refers to various conditions, what did you do, Mr. Johnson? A. Well, it involved a considerable amount of work and I took item by item, first was the warranty fees for the 97 acres to approve that that was in form prescribed by our Maryland law and over my signature or initials I said "Approve—T.F.J."

Q. On the margin of the letter? A. On the margin of the letter. And this was written at the time that I approved the bid.

The next dealt with quit claim bid to the remainder of the property, the 7,800 acres. And I also approved that as to form and in compliance with the Maryland requirements.

The next was the assignment of notes in the amount of $33,000. That was tied in with the item 5 in which there was to be satisfactory evidence that the $33,000 promissory note is the sole obligation from the Southern Maryland Publishing Company to Lefcourt. What had happened that that involved a newspaper in Southern Maryland, I think called Charles County Leaf, and Lefcourt had a note of $33,000 which had been treated as ownership of this newspaper.

In order to clear the understanding, I got in touch with a Mr. Brown who presumably was Southern Maryland Publishing Company, and my marginal notes show that that was approved—"Letter from Brown." So, I presume Mr. Brown confirmed that that note was recognized as the obligation due and owing by the publishing company and constituted ownership of the paper.

Next were mutual releases by Charles County Land and its agents. Those releases were given to me which I approved.

The second item was the title opinion from De Sales Mudd and I got in touch with Mr. Mudd, told him as to the settlement that had been effected that I would require a written letter or a letter from him setting forth that there was good title in the Charles County Company by virtue of its settlement of this claim, the warranty deed and the quit claim deed.

And on July 17, 1961, Mr. Mudd did address a very detailed letter covering his examination and title approval.

Q. That letter is already in evidence, is it not? A. I do not know whether it is or is not.

(Mr. Doub) Will you give me that and I will ask the clerk if she might be checking that. I think it is.

(The Witness) Then another item which gave great concern was the plans. There had been a room filled with—

(The Court) Defendant Johnson exhibit 36—letter of July 17, Mudd's letter.

By Mr. Doub:

Q. In any event, without continuing on as to those conditions, you verified each of the required conditions before you made delivery of that check? A. I may say, Mr. Doub, I did and there were many conditions, many conferences and work in order to satisfy the conditions set forth in this letter.

Q. What period of time did you consume with respect to them? A. My recollection is that it was impossible to conclude the conditions until, I think it was July 20, if I am not mistaken, of 1961.

Q. Now, is that the date on which the Charles County Land obtained title to this 8,000-odd acres from Desser & Garfield? A. Not the 8,000. They obtained title to the 97 in fee. They had a quit claim deed for the remainder.

Q. They obtained a quit claim? A. Subject to the outstanding mortgage.

Q. Now, on July 20, 1961, the papers were executed implementing this settlement, is that not correct? A. That is correct.

Q. And at the same time was there a new mortgage executed, or was there a modification agreement of the terms of the mortgage? A. As I recall, there was modification to many of the provisions of the mortgage.

Q. Well, did you do any work on that amendment? A. I worked with Mr. Robinson as to the modifications. They were very detailed and involved.

Q. Could you summarize briefly the mortgage amendments? A. First, the release, I am doing it now from my best recollection. The release clause called for 1,060 acres that would be released by the mortgage to Charles County for development.

In addition, there would be an eleven-foot bridal path around the entire perimeter of the 8,000 acre tract. In addition, there was modification as to the timber rights, gravel, the use of gravel during the construction period, extension of the mortgage, which went for the seventeen years.

Q. Let me ask you this: Did a problem arise here as to a merger of interest and if so what, if anything, did you do about it? A. Yes, at the closing of the equity proceedings in Charles County, I instructed Mr. Carrico to

reassign the mortgage to the Charles County Land Company, and over the phone I mentioned the possibility of a merger of interest. Mr. Carrico ventured an opinion that he thought there was a merger, whether he should look into it. I said, no, I will pursue the legal aspects of that.

So I did make a rather extensive research of merger of interest because under our general practice equitable interest and legal interest merges into the legal interest. In this case, Charles County Land had the legal entitlement now in reassignment of the equitable interest of the mortgage.

After research of the authorities I found that it depended on the intention of the parties whether there was a merger, whether the merger took place at the same time with the same parties, but from the records, my search revealed that there was no merger of interest, and I so advised the parties, Mr. Robinson and Mr. Edlin and the others.

Q. Now, as of July 20, 1961, then Charles County Land Company had become the owner of this whole property, subject to a mortgage of, I believe, $5,875,000, wasn't it. A. Approximately, exclusive of interest.

* * * * * *

[TR 3419-3421]

Q. I show you a legal document entitled "Amendment to Purchase Money Mortgage," which is certified by the Circuit Court of Charles County, dated July 20, 1961, and ask you if that is the agreement modifying the terms of that Ernest mortgage?

(The Court) Is it the Ernest mortgage, or is it the mortgage that Charles County now owns?

(The Witness) May I explain to the Court what it is.

If Your Honor please, the mortgage continued to Ernest on the entire—the mortgage obligation continued to Mr. Ernest. In the settlement there was only modification of

that mortgage extending the terms or the provisions, but Albert Ernest continued to hold a first mortgage on the 7,800 acres, less 1,060, which was in a release clause.

(The Court) Wasn't there some testimony or some paper offered indicating that the mortgage had been assigned to Charles County Land Company? I don't understand what your problem was about merger. If Charles County Land Company didn't own the mortgage—

(The Witness) Charles County did own the mortgage because it was assigned over for foreclosure and then reassigned to Charles County.

By Mr. Doub:

Q. You mean reassigned to Ernest after the settlement?

(The Court) Mr. Doub, he is trying to explain it. If you want to explain it, I will be glad to hear it from you. If he wants to explain it as a witness, let him explain it. I would have thought there were some papers that contain the transaction.

(The Witness) It is not that complicated. Charles County Land had title by deed to the land, a quit claim deed, subject to the existing mortgage. When the foreclosure was assigned, the mortgage was assigned over for foreclosure.

(The Court) By whom to whom?

(The Witness) It was assigned from Charles County, who had purchased the mortgage previously from Albert Ernest. Then it was assigned over to Carrico for foreclosure. Then he reassigned it back to Charles County Land. Then Charles County Land worked out on July 10th a modification agreement of the original mortgage so the original mortgage still continued in existence.

(The Court) Running to whom?

(The Witness) To Albert Ernest.

(The Court) Well, then you said a moment ago, I thought, that Charles County Land Company had purchased the mortgage from Ernest.

(The Witness) Yes.

(The Court) Now, did they purchase it or didn't they? If they purchased it, I would have thought they owned it. If they had purchased it and owned it, how did it still run to Ernest?

(The Witness) Yes. It was purchased for the $125,000, subject to an agreement on modification of the terms. At that time it was to be a substituted mortgage for the original mortgage. Then in the ultimate conclusion after the foreclosure was withdrawn, Charles County then worked out with Albert Ernest reassignment back to Albert Ernest of the mortgage with the modification agreement, so that they had the mortgage originally with the modification agreement, but at one juncture Charles County had both the mortgage assigned to them and had the legal title.

* * * * * *

[TR 3424-3429]

Q. Mr. Johnson, I do not propose to have you review the correspondence you had with Mr. Mudd, which Mr. Mudd testified to. I will hand you Johnson's Exhibits 35, 36, 37, 38, and 39, and ask you if the letters that are contained there addressed to you from Mr. Mudd were received, and the letters you wrote him were sent by you, and there are several letters, I believe, between Mr. Mudd and Mr. Robinson, and I ask you whther you received copies of them? A. I only see one letter to Mr. Robinson. The others were addressed to me, with the exception of one, which is a letter I had to Mr. Mudd, and these dealt with the transaction.

(The Court) They have all been read to the jury.

(Mr. Doub) That is right, and they will not be read again.

(The Court) I don't see that there is any need to read them again.

(Mr. Doub) No, Your Honor. We don't propose to.

By Mr. Doub:

Q. Now, did you make a trip to Fredericksburg at any time to see Mr. Ashby? A. I did. I was also there to visit the land prior thereto, the Leisure City property.

Q. And what was the purpose for that trip to Fredericksburg? A. Well, prior to Fredericksburg I made a visit to view the Leisure City land, particularly the proposed area for a marina, and it was to ascertain what agencies had to be contacted to get approval for the work that was contemplated on the marina.

Q. Who accompanied you there? A. I believe Congressman Boykin was with me. Whether anyone else, I do not recall.

Q. Now, do you recall making a trip to Stafford, Virginia, in connection with the Brooke, Virginia, property? A. Yes, sir, I was at Stafford, I think, on June 9, 1961, for a meeting with Mr. Frank Moncure, who is an attorney in Stafford. He was handling what we called the Brown tract.

Q. Now, I show you a letter from Mr. Ashby to you, which is in evidence as Defendant Johnson's Exhibit No. 20, dated May 18, 1961, reporting on some of this title problem with respect to this property and ask you if you received that? A. I did, but we had other work with Mr. Frank Moncure, of Stafford, too.

Q. Well, will yo utell the jury about it? A. At the time that Leisure City was acquired, the tract known as the Brown tract, which had approximately 140 some acres, was to be included with the other tracts in the Leisure City area. Presumably Leisure City thought they had title to the Brown Tract. That was the understanding. But I received word there was no title of record in the name of—

I don't know whether the Washington Turpentine or Tensaw or who it was, so my purpose was to discuss with Mr. Frank Moncure, who had been handling the Brown tract, as I understood, under a deed of trust or foreclosure, and with Congressman Boykin I went to see Mr. Frank Moncure.

We had a discussion as to how best to clear title. I told him that I wanted a title report, which was later sent me on the property.

Q. Now, did you receive letters contained in Johnson's Exhibit 22, 23, 24, 25, 26 and 27? A. I did, and you asked me about Defendant's Exhibit 20. That is a very long letter from Mr. Ashby in respect to the work they would do on the title, the purpose of which was to secure insurance coverage of $850,000 on the Leisure City land.

(The Court) Those letters, I believe, were offered in evidence, and all or part of them were read to the jury when Mr. Ashby was on the stand.

(Mr. Doub) Yes.

Here is one, however, from Mr. Johnson to Mr. Mudd, on July 21, 1961, which I don't believe is in evidence, Your Honor.

(The Court) What date?

(Mr. Doub) July 21, 1961.

(The Court) A Mudd transaction?

(Mr. Doub) It is from Johnson to Mudd.

(The Court) I was looking at the Ashby one.

(Mr. Doub) I will come back to that.

(The Court) 21 July, 1961, Johnson to Mudd, Defendant Johnson's Exhibit 38. It is the same letter. There is such a letter in evidence.

(Mr. Doub) Very well, Your Honor. I am not going to put it in again.

(The Court) It may be a different letter. This one deals with getting a copy of the report of the Lawyers Title Company. Is that the one?

(Mr. Doub) Yes, Your Honor.

By Mr. Doub:

Q. As to your correspondence with the Virginia lawyers, I ask you if you received this letter from Mr. Ingram, dated June 22, 1961, which is not in evidence? A. I did.

(Mr. Doub) I offer it in evidence, Your Honor.

(The Clerk) Defendant Johnson's Exhibit No. 88, marked in evidence.

(Defendant Johnson's Exhibit No. 88 marked in evidence.)

Mr. Doub: (Reading)

"Dear Congressman Johnson:

"I am writing this letter to advise you that all of the information pertaining to the Gus Brown property and the Temptation Farms tract consisting of 620 acres, more or less, has been turned over to C. B. Malcolm & Son, State Certified Engineers, with the request that they estimate the costs of incorporating the same on the composite map prepared for Tensaw Land and Timber Company, Incorporated, dated March 1953. Because of other commitments, Malcolm has been unable to give attention to this matter until very recently. I expect to hear from him momentarily, at which time I will again communicate with you.

"Very truly yours,

"J. Wilson Ingram."

"cc: The Honorable Frank W. Boykin

James Ashby, Jr., Esq.

J. M. H. Willis, Esq."

By Mr. Doub:

Q. Now, I ask you if you received a letter from Mr. Ingram, dated July 30, 1961, which is not in evidence? A. Yes, I was sent a copy of this.

Q. You received a copy of this letter from Mr. Ashby. Wait a minute, I think there are two letters here, from Mr. Ingram to Mr. Ashby of June 30, 1961. I offer it.

(The Clerk) Defendant Johnson's Exhibit No. 89, marked in evidence.

(Defendant Johnson's Exhibit No. 89 was marked in evidence.)

* * * * * *

[TR 3430-3455]

By Mr. Doub:

Q. Mr. Johnson, I am going to ask you to identify some additional correspondence with the Virginia lawyers with respect to the Brooke, Virginia property indicated which have not been admitted in evidence before. I show you what purports to be an office copy of a letter of yours to J. Wilson Ingram, Roanoke, Virginia, June 28, 1961 with a copy to Mr. Frank Boykin. Did you write that letter? A. I did.

Q. And there in that letter you sought what from him? A. I was very anxious to get a perimeter survey of the Leisure City land and I merely requested the perimiter survey at the earliest possible date.

(Mr. Doub) I offer this in evidence.

(The Clerk) Defendant Johnson's exhibit 90 marked in evidence.

(Defendant Johnson exhibit 90 marked in evidence.)

By Mr. Doub:

Q. I show you what purports to be an office copy of another letter from you to Mr. Ingram of July 21, 1961

and ask if you— if that is a copy of such a letter which you wrote? A. It is and it is again to request the perimeter survey which I had requested in a previous communication.

(Mr. Doub) I offer it in evidence.

(The Clerk) Defendant Johnson exhibit 91 marked in evidence.

(Defendant Johnson exhibit 91 marked in evidence.)

(Mr. Doub) That is a letter dated July 21, 1961.

By Mr. Doub:

Q. Now, I show you a copy of a letter from Mr. Ingram to Mr. Malcolm dated July 25, 1961, with a copy to you, and ask if you received a copy of that letter? A. I did. Mr. Ingram was endeavoring—

(The Court) I thought you were going to put in a bunch. Show him all of them and they can be found one after the other.

(Mr. Doub) I may have to refer to another one here, Your Honor.

(The Clerk) Defendant Johnson exhibit 92 will be received in evidence, that is a letter dated July 25, 1961, as Defendant Johnson exhibit 92.

(Defendant Johnson exhibit 92 received in evidence.)

By Mr. Doub:

Q. Now, I show you a letter from Mr. Ingram to yourself dated September 28, 1961 and ask you if you received that letter? A. I did.

Q. And what does that letter discuss? A. It discussed the difficulty we encountered to close the perimeter survey on this 74,000 acres. In the pinpointing of the different tracts there were approximately five acres that could not be platted and we worked back and forward trying to work out some means of closing the survey.

Ultimately, I consented to the survey without the 5.14 acres.

(Mr. Doub) I offer it in evidence, Your Honor.

(Mr. Weiner) Is that September 28?

(Mr. Doub) Yes.

(The Clerk) Letter dated September 28, 1961, Defendant Johnson exhibit 93 marked in evidence.

(Defendant Johnson exhibit 93 marked in evidence.)

(Mr. Tydings) That is Government exhibit 159. We just ascertained that, Your Honor. The letter of September 28 from Ingram to Johnson.

By Mr. Doub:

Q. Now, Mr. Johnson, I show you a memorandum addressed to you headed "Memorandum on Brooke Property," and ask you what that is? A. This memorandum is in answer to information that I sought on the Brooke, or the Leisure City property.

Q. Sought from whom? A. Well, at the time Mr. Hollis Rhinehart had first brought it to my attention and whether it was Mr. Hollis Rhinehart or who, I do not know. It is not signed.

But I had requested it. It is addressed to me and I had requested the authorization of the right of Tensaw Timber and Land Company to sell the Brooke property. I wanted to know about the taxes. I wanted to know what the assessment was. I wanted to know whether there were plats and what plats there were.

Also, I wanted to know about tenants, and insurance, particularly the contact with American Asphalt. I wanted to know what bodies of water that the land bordered on or were involved; also, I asked to know what local commissions, whether it had a sanitary commission, state, county, and other information.

I requested this about the time that I assumed the responsibility of supervising title to this large tract in Virginia. And that was pursuant to the agreement that I referred to on May 2, 1961.

Q. That was included in the fee arrangement? A. Yes, that was included in the $25,00 net for the work.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson's Exhibit 94 marked in evidence.

(Defendant Johnson exhibit 94 marked in evidence.)

(Mr. Marion) Wasn't that already in for identification?

(Mr. Doub) I do not think so. It may be; if it is, it is only for identification.

By Mr. Doub:

Q. Mr. Johnson, when would you say your legal services for the land companies for all practical purposes ended? A. I would say the latter part of August, possibly the first part of September, 1961.

Q. Was there any reason for you to stop performing legal services about that time? A. In respect to the two land companies there had been several groups who had shown interest in this development. One was the Sayre-Fisher Company from New York, I believe it was. There is another one, the Kadder Corporation which is listed on the Board. Both of those companies. The Bruce Lumber, and there had been—

Q. I intended to ask you about those companies and forgot. Will you go ahead and tell the jury just what you know about the interest that those companies had in acquiring—

(The Court) What he knows about it or what he did. We do not have to have a history of everyone of these corporations except in so far as he had some part in it.

(Mr. Doub) That is right. I just want you to tell the jury what, if any meetings you attended with any officials of those companies and for what purpose were the meetings?

(The Witness) Well, on or soon after the incorporation of the two companies, the Charles County Land and Leisure City, there were outside interests who met in Washington for the development of these two tracts of land. I met, personally with the groups. I know specifically the president of the Sayre-Fisher Company. I had one or two or possibly several meetings with the Kadder, the president of the Kadder Corporation which is a very large corporation in New York listed on the Exchange.

I do not recall meeting with any one of the Bruce Lumber Company. I may have. But later on I did also meet with a Mr. Finneran who ultimately negotiated a purchase of the two tracts of land through his company.

By Mr. Doub:

Q. Or the stock of the land companies, you mean?

A. Yes.

(The Court) Can't you let the witness tell his story? If you want to correct him over and over again, we will have to work out something. You asked the witness a question. The jury and everyone else are entitled to have him answer it.

By Mr. Doub:

Q. Go ahead, Mr. Johnson. A. In these negotiations there was to be a stock transfer on an exchange basis as to Finneran. I do not know that to be true because I was not a party to the Finneran transaction.

Q. All right.

Now, you have talked about meetings with officers of Kadder Corporation and Sayre-Fisher. What was the purpose of those meetings? Why were they in Washington? A. Well, I had recalled distinctly the Sayre-Fisher Com-

pany, one of their subsidiaries or main company was in the brick business and had been in for over a hundred years. They were interested in expanding. They wanted to utilize their product in this development. They were listed on the Exchange. I recall the American Exchange. They desired to have a stock exchange with Charles County-Leisure City, with Sayre-Fisher. So that they could develop both properties, the property in Virginia and the property in Maryland.

I think the same is true of Kadder. The Kadder Corporation were developers in New York. They were real estate operators. That was also to be a stock exchange arrangement.

Q. Now, I ask you again, Mr. Johnson, why your legal services came to an end, as you testified, about sometime in August, 1961, for the land companies? A. Well, I became concerned because I was representing undisclosed principals. I had difficulty in finding who the principals were. I felt that I should continue my Congressional work which, at the time, we were near the close of the session, with sessions in the evenings and with the combination, I decided to withdraw.

Q. Well, now, when you say that—strike that.

You said you had been representing the land companies and now you refer to "undisclosed principals." Will you state what you mean by that? A. Well, I was anxious to know the ownership of Charles County. I was anxious to know the ownership of Leisure City.

Q. And where did you— A. I had been told that there were undisclosed principals who had the stock interest.

Q. Told by whom? A. I think possibly Mr. Edlin. I do not know who else.

Q. You did seek information as to the stock ownership of those companies from Mr. Edlin? A. Yes, he would tell me that there would be interests who had invested in New York, Chicago, and I sought that information from him.

Q. Well, did he tell you who the stockholders were of those two companies when you asked for that information? A. Well, some names were mentioned but I never secured the information—all of the information that I desired.

Q. Now, I show you Government exhibit 12 which is a check dated May 2, 1961 in the amount of $3,500 on First Continental Savings and Loan, and the voucher says "For Legal" and I ask you whether you received that check and for what purpose it was sent you? A. I received this check. It was in part payment of the fee agreed upon on May 2, 1961, dealing with Charles County and Leisure City land transactions.

Q. That was on account, you say? A. On account of fees which were deposited.

Q. Now, I show you Governmetn exhibit 13 being a check dated May 25, 1961 in the amount of $2,500. The voucher says "Legal Fees In Full—Brooke," and ask if you received that check and what its purpose was? A. This check was received, also in part payment in respect to the fees agreed upon May 2, referred to which was deposited to my legal account, regular legal account in Berlin.

Q. Now, I show you a check of First Continental dated June 7, 1961 in the amount of $4,000, Government Exhibit 14, and the voucher refers to "Legal" and ask you if you received that check and what its purpose was. A. Yes. This check was received. It was deposited in my regular legal account and that was in payment of two previous checks that had been issued which was really a substitution of two previous checks.

Q. Let us see the exhibit number on those. Do you have 26-A and 26-B?

(The Clerk) Yes, these are vouchers that are in Government exhibit 26 marked for identification and here is 67-A and 83.

By Mr. Doub:

Q. Now, you testified that that check was in substitution of two other checks. I show you Government exhibit 26-B, which appears to be a check of First Colony dated May 25, 1961, in the amount of $2,500. A canceled check. I also show you a check dated May 2, 1961 for $1,500 of First Colony, Government Exhibit 27, and also canceled and ask you if those checks were sent to you? A. I do not know whether it was sent but I had received two checks in aggregate $4,000.

Q. Now, you testified that the later First Continental check for $4,000 was issued to you in substitution for those two First Colony checks. Why did you not accept the First Colony Check? A. Well, First Colony at the time was under a pending indictment and I had been before the Department of Justice in reference to the indictment of First Colony. I had discussed with the Attorney General, the Assistant Attorney General, as my lawyer, being a lawyer, in respect to First Colony. I felt that it might be misconstrued that if I accepted a First Colony check that I was paid to go before the Attorney General and not having been paid, I wanted the record clear that there had been no payments to go before the Attorney General or his Assistant, and that is the reason I refused to take the checks and asked them to substitute checks for the $4,000 from First Continental.

Q. Now, were those checks of First Colony which you have just identified which you did not accept, were they issued in payment of any services which you could be deemed to have rendered in the course of your visits to the Department of Justice? A. Absolutely none. This $4,000 constituted the final payment of the $10,000 which was the agreement of May 2, in respect to the legal fee in which I was to get $25,000 total fee net to me. But, as I have stated, I did not receive it.

Q. Now, I show you a First Continental check dated June 28, 1961, in the amount of $3,250 — Legal, on the voucher and ask you if you received that check and what

it was for? A. I did. This is also pursuant to the legal work with Leisure City, Charles County, a check that I deposited to my attorney's account at the Exchange and Savings Bank in Berlin.

Q. What understanding did you have, Mr. Johnson as to these checks from First Continental, to whom or what company they were charged against? A. I had no understanding. I know on April 29 there were loan agreements, one dealing with the Charles County Land to First Colony. There was another loan agreement from Leisure City to First Colony.

Q. You mean Leisure City? A. First Continental.

(Mr. Tydings) Mr. Doub, please let the witness testify.

(Mr. Doub) If he makes a perfectly obvious slip—

(Mr. Tydings) The jury is entitled to pass on it.

(Mr. Doub) All you want to do is have the witness make some mistake in language that you can seize on.

(The Witness) May I say—in answer to that—there had been previous loan agreements and participation by both First Colony and First Continental in respect to Leisure City and to Charles County.

By Mr. Doub:

Q. Charles County Land? A. It was my understanding that these fees were a charge against the funds under that loan agreement.

(Mr. Tydings) And from whom?

(Mr. Doub) And they ultimately would be paid by what companies?

(The Witness) By Charles County and Leisure City.

(Mr. Tydings) Mr. Doub, who gave him the understanding, who told him?

(Mr. Doub) Very well.

By Mr. Doub:

Q. Where did your information come to you that these payments were charged against Leisure City Land and Charles County Land? A. I think that Mr. Edlin and Mr. Robinson and also Mr. Rains on his direct examination told of the participation of both in respect to these very checks on a 70-30 basis.

(The Court) You mean that you understood it from what you have heard on the witness stand or that you understood it at the time.

Unless I misunderstood you, I thought a moment ago you said you had no understanding as to what something was being charged against and now you said you understood it would be charged. And the question, Mr. Doub adopted from Mr. Tydings, was where did you get that understanding, and you have now said in part was based on something you have heard on the witness stand here today, not today, I mean in the last month or so. Now, the question would be what you knew at the time, not what you have heard which the jury have also heard.

(The Witness) Well, may I say, Your Honor, I did not have the loan agreements, I did not know what arrangements each of the associations had as to percentage of participation. It was only Mr. Rains' testimony that I learned as to the percentage. But with Mr. Robinson and Mr. Edlin — there had been discussions as to the loan companies participating against Charles County and Leisure City.

By Mr. Doub:

Q. Now, I show you Government exhibit 67, being a check of August 4, 1961, of Mr. Robinson, in the amount of $2,000, and asked you if you received that check and what was its purpose? A. That was also payment on the fee which was credited to my account, legal account, in Berlin.

Q. You mean you deposited the check? A. They were all deposited, all these checks were deposited.

Q. Now, what was the purpose of that check? A. That was part of the fee, that pursuant to the agreement on May 2.

Q. Now, I show you a check dated September 12, 1961 and on Mr. Robinson, the amount of $1,500 Government Exhibit 83 and ask you if you received that, where you deposited it and what was its purpose? A. Yes, I think this was the last check received, that, too, was a part of the legal fees deposited to my legal fee account in Berlin.

(Mr. Doub) Unless I have missed one, Mr. Johnson, the checks that I have read to you and which you have identified as having been received by you after April 30, 1961, I believe total $16,750.

By Mr. Doub:

Q. Now, did you receive any other checks, and I am not including the Traveler's Checks that I am coming to next, in 1961? A. You mean from Mr. Robinson or First Continental?

Q. That is right, or the Land Company or First Colony? A. I did not.

(Mr. Marion) Except, I assume, of course, the rent check about which he previously testified sometime ago.

(Mr. Doub) I am talking about payments for legal services.

(Mr. Marion) I just did not want the witness' answer to be misunderstood.

(Mr. Doub) You are very helpful.

(The Court) I think it would be better if the Government did not interrupt. I think that it is wiser in many ways to have the cross examination at the appropriate time.

By Mr. Doub:

Q. Now, sir, tell the jury whether you had any discus-

sions with Mr. Edlin about settlement of your fee account? A. I did. I think Mr. Robinson might have been present at the time of the conference or conferences.

Q. And about when was that? A. In October, the last of October. I think it was the 23rd of October, 1961, or before that it was, because I recall talking on the telephone to Mr. Robinson before that.

Q. And what, if any, settlement agreement did you make with Mr. Edlin and Mr. Robinson? A. I stated that I felt that I certainly was entitled to the balance of my account, that I had not done any work in the last few weeks before the conference. I wanted a settlement and it was agreed that I would be paid a balance of $3,000 in full, provided they would pay all costs for plats, engineering, other attorneys, $3,000 net to me.

(Mr. Doub) Would Your Honor indulge me just a moment?

(Pause.)

By Mr. Doub:

Q. Now, will you tell the jury what occurred on the afternoon of October 23, 1961 which was the day before you left the country? A. I had been in touch with Mr. Robinson and told him I was leaving on the 24th of October with the Foreign Affairs Committee and would be, presumably, gone for the remainder of the year. That the settlement we had discussed, I would like to have a check for the $3,000 on the 23rd, which would be the day before I was scheduled to leave. I told him that I wanted to buy travelers checks to be used when I was with the committee. I heard nothing further from Mr. Robinson until the 23rd of October when they called me, I think Mr. Edlin was with him—that they would be in my office in Washington. They were to be in the early part of the afternoon.

Q. Now, who do you mean? A. Mr. Robinson and Mr. Edlin.

Finally, about five o'clock, or 5:30, Mr. Edlin and Mr. Robinson came in to my office. They apologized for being delayed. They had some other matters.

I asked them about the check. I told them that the banks had then closed. It was embarrassing because I understood they would be in early, that I wanted my settlement on the fee with the land companies which we had agreed on. I was told that First Continental Savings and Loan issued Traveler's Checks. It could be arranged through that institution. They were contacted, First Continental Savings and Loan.

Q. Who called them up? A. I do not recall whether it was Mr. Robinson or Mr. Edlin. One or the other called the First Continental Savings and Loan but in any event the Savings and Loan issued Travelers checks and it was arranged that the $3,000 would be issued by First Continental Savings and Loan but on that occasion that day I was to meet Mr. Adelberg who was in Washington. I had no car. I wanted to get to Baltimore, and Mr. Adelberg suggested that we meet at a convenient place. He was out on Wisconsin Avenue. I suggested the Woodner Hotel which is not too far from the Wisconsin area. At the Woodner, there was arranged that Mr. Rains, who was connected with First Continental Savings and Loan, would bring the checks, the Traveler's checks to me at the hotel.

I arrived at the hotel. I believe Mr. Edlin and Mr. Robinson went with me from the Capitol. We arrived there. There was in the lounge quite a number of gentlemen, Mr. Adelberg had a client; Mr. Goldman, Mr. Rains, and possibly one or two more. When we arrived, Mr. Rains came over to where Mr. Edlin was sitting, saying that he had the Traveler's Checks and that an application also was to be signed.

Mr. Edlin and myself moved over to about possibly two or three tables, and I then signed an application blank for the Traveler's checks and that application blank read that

they were being purchased from the Continental Savings and Loan Association.

Q. Is that a copy of what you are talking about, or are you referring to something else? A. This is a copy of the receipt that was given me but it does not show the portion that was signed by me as recipient of the checks.

Q. All right. You signed at that side table then a receipt for the traveler's checks. Now, state whether or not you signed each of the 65 checks? A. I did. I was careful to sign them before taking them out because of loss. All 65 were signed.

Q. Now, Mr. Johnson, Mr. Rains testified that you and Mr. Edlin were over there at the side table for only about fifteen minutes, and it would have taken you thirty minutes to have signed your name on those traveler's checks. Have you made a test of that to find out how long it would take you to do it? A. I have.

Q. How long did it take you? A. Between 12 and 14 minutes. That was the 66 signatures with one for the application and 65 checks.

So, after signing the checks, Mr. Edlin spoke of a service charge of 30 cents, so I gave him 30 cents. I went back to the table where the others were sitting. Mr. Robinson was there. I told him that I wanted a statement showing that this was the balance of my legal fees that it was charged against Charles County and for him to please give me a statement for my own records. He told me he would do that.

Mr. Adelberg and myself then left and returned to Baltimore.

The next morning I left at 8 for the Far East.

Q. Eight in the morning or 8 in the evening? A. In the a.m.

May I say at that time and following that, that the savings

and loan was under the supervision of the State, audited by the State, and I think some mention was made of that in the discussion as to the records and I knew that there would be auditing and I wanted the records to show that it was Charles County.

Q. Now, when did you return from your trip abroad? A. I think it was the 21st, the 22nd of December.

Q. On your return what did you find as to some publicity that had appeared in a newspaper in Washington? A. Well, there had been some publicity in the Washington Post.

Q. About these travelers' checks? A. Possibly, but I had not been in the country and I had not read the papers.

Q. Now, I show you a paper and ask you what that is? A. This is a handwritten statement from Mr. Robinson under date of October 25, 1961, in which he confirms the Traveler's Checks and says that they were charged in the Charles County fee.

Q. When, however, did he write that? A. This was written after my return because I was very indignant. I had not gotten the letter that Mr. Robinson had promised. I had told him that he had not done what he had agreed to do.

And he then sent me this letter which was dated October 21, 1961.

Q. All right.

(Mr. Doub)I offer this in evidence.

(The Clerk) Defendant Johnson exhibit 95 marked in evidence.

(Defendant Johnson exhibit 95 marked in evidence.)

By Mr. Doub:

Q. When had you asked Mr. Robinson for a confirmatory letter, upon your return from abroad? A. I do not recall the date. I presume it was some time in December.

Q. You did not return you say until— A. The last of December, yes, or maybe January. I do not recall.

Q. And shortly after that, when, you received this letter? A. Yes.

Q. It is dated October 25, 1961, and it reads:

"Dear Tom:

"This note is to confirm that I have paid for the Traveler's Checks and charged the $3,000 to your attorney account for Charles County for your charges for legal services.

"I believe this"—with a word left out—"your account in full. On your return please send a receipted bill. Harry still has a balance due.

"As aways, my best to you and Agnes,

s/"Bill."

Now, this is written from Miami. It says "On your return, please send a receipted bill." Is it possible that you had not returned when he wrote this? A. It is possible but I do not recall that. But there was a subsequent letter.

Q. I would like the Government to produce the original of a letter from Mr. Robinson to Mr. Johnson dated February 28, 1962.

(Mr. Marion) It is downstairs.

(Mr. Doub) I have a photostat, may I put that in?

(Mr. Tydings) Let us have a look at it.

(Mr. Doub) We can substitute the original tomorrow.

By Mr. Doub:

Q. Now, I show you what purports to be a photostatic copy of a letter addressed to you dated February 28, 1962, from Mr. Robinson, and ask you whether you received the original of that letter? A. I did.

(Mr. Doub) I offer it, Your Honor, with the understanding the original may be substituted tomorrow.

(The Clerk) Defendant Johnson exhibit 96 marked in evidence.

(Defendant Johnson exhibit 96 marked in evidence.)

By Mr. Doub:

Q. Now, how did Mr. Robinson happen to write you this letter upon the same subject, Mr. Johnson? A. It was at my request I had received this handwritten letter. I was not too satisfied as to the date nor the wording to be in his own handwriting. So I requested a current or dated letter as of the date of my request to explain what it is.

Q. What do you mean you were not happy about the date of it? A. I did not know whether or not it was dated a different date from the—or may I say, I presume it had not been executed at the time, or signed at the time of October 25.

Q. Johnson exhibit 96 is a letter on the letterhead of Mr. Robinson. It is a typed letter, February 28, 1962 to Mr. Johnson.

"Dear Tom:

"Pursuant to our conversation, this is to confirm that the $3,000.00 traveler checks received by you from First Continental in October of 1961, representing attorney's fees due to you from Charles County Land Company, Inc., were paid for by Charles County Land Company, Inc., with its check drawn on the Gotham Bank of New York, in the sum of $3000."

"Very truly yours,

"Bill."

* * * * * *

[Tr. 3457-3460]

Q. Mr. Johnson, there is in evidence a letter of yours bearing the date, December 27, 1961, to Mr. Ashby, en-

closing a check for $4400. You sent that letter and that check, did you not? A. Yes, sir. I sent the letter.

Q. Now, have you prepared a tabulation of all legal fees which you received from April 30, 1961, to October 1961, inclusive? A. I have.

(Mr. Doub) I would like to offer this in evidence, Your Honor.

(The Court) May I see it a minute?

You mean fees received in connection with this matter or any fees? You asked him about legal fees received.

(Mr. Doub) I am going to ask him some more questions.

(The Court) I don't know whether your question was meant to be all legal fees of any kind he received from anybody or legal fees received in connection with the matter he has been testifying to.

(Mr. Doub) I am going to ask him both, Your Honor.

(The Court) It was an ambiguous question.

By Mr. Doub:

Q. Does that tabulation which you say you prepared include all payments which you received from any source? A. No, Mr. Doub. I had legal fees from other cases.

Q. Other clients? A. Other clients, which were deposited to this same account, legal account.

Q. But this includes all legal fees? A. Pursuant to the May 2nd agreement.

Q. Involved in this case? A. Yes.

(Mr. Tydings) I don't quite understand your question and the answer, Mr. Doub.

(The Court) I think if Mr. Doub would let his witness answer instead of trying to correct him every time. The witness said quite clearly to me these were all of the fees

he received pursuant to the agreement of 2 May 1961, to which he has testified. Mr. Doub says all those involved in this case. I don't think he really means that.

(Mr. Doub) That is all that are involved, Your Honor, because that is all the Government has put in evidence. This is everything the Government has put in evidence.

(The Court) You word it in your own words if you want to correct it that way.

(The Clerk) Defendant Johnson's Exhibit 97, marked in evidence.

(Defendant Johnson's Exhibit No. 97 was marked in evidence.)

(Mr. Doub) This shows the following checks that you received after May 1, 1961.

Date of Check	*Maker*	*Amount*
May 2, 1961	First Continental Sav. & Loan	$3,500.00
May 25, 1961	do	2,500.00
June 7, 1961	do	4,000.00
June 28, 1961	do	3,250.00
August 4, 1961	William L. Robinson	2,000.00
Sept. 12, 1961	William L. Robinson	1,500.00
Oct. 23, 1961	Travelers Checks	3,000.00
Total Receipts		$19,750.00

(The Court) Now, Mr. Doub, that far it is simply a tabulation of checks that are already in evidence.

(Mr. Doub) That is right.

(The Court) From here on, is it just a tabulation, or is it new evidence?

(Mr. Doub) No new evidence, just a tabulation of what is in evidence. It shows then:

Disbursements

Date	*Payee*	*Amount*
July 5, 1961	Harry Adelberg	$500.00
Aug. 7, 1961	Harry Adelberg	$500.00
Dec. 27, 1961	Goodrick, Ashby & Whittier	4,400.00
Total Disbursements		$ 5,400.00
Net Received		$14,350.00

By Mr. Doub:

Q. Now, Mr. Johnson, did you receive from anyone in 1960 or 1961 any payment in cash? A. Nothing whatever.

Q. Did you receive any gifts from Mr. Edlin? A. I recall one gift. We were in the time of the business meeting in Jamaica. I think he bought a box of cigars for me. That was the extend of the gifts from Mr. Edlin. Congressman Boykin did give me the famous bull, which has been referred to.

* * * * * *

[Tr. 3461-3468]

Q. I show you what purports to be a certified statement of the financial condition of First Colony Savings and Loan Association as of May 31, 1961, and ask you if you received that about that time or shortly thereafter? A. I did pursuant to my request, because I requested a statement of the condition of First Colony Savings and Loan, and it does reflect a very excellent—

(The Court) Now, Mr. Doub, are you putting that in as a correct statement or not? Do you want to put it in that that is a true statement of First Continental's affairs, or for what purpose is it being put in here? I want to know how far to allow cross examination on it.

(Mr. Doub) I am offering it for the purpose of showing what the financial condition of that Association was represented to Mr. Johnson to be.

(The Court) What is the relevancy of that to any issue in the case?

(Mr. Doub) Well, Your Honor, this case has many facets, and I think that the Government, it may be from the opening statement, they might try to argue that Mr. Johnson had different information from the information that I am showing came from his file.

(The Court) You haven't shown it—if this came from his file. You are not offering it for the truth of the statement then?

(Mr. Doub) I don't know anything about the truth. It is a certified statement with a certified public accountant's name on it.

(The Court) I am asking you, are you offering it for the truth of the statement? You say you are offering it to show something that Mr. Johnson got, what was represented to Mr. Johnson?

(Mr. Doub) That is right.

(The Court) If you think that is relevant to the purposes of this case, I will admit it, but I will also allow the Government to cross examine on it, if you wish to offer it, if you wish to open up that point.

(Mr. Doub) Yes, I wish to offer it, Your Honor.

(The Court) All right.

(Mr. Genn) I don't think that is relevant to this proceeding.

(The Court) It will not be admissible against Mr. Edlin.

(The Clerk) Defendant Johnson's Exhibit 98 marked in evidence.

(Defendant Johnson's Exhibit 98 was marked in evidence.)

(Mr. Doub) Defendant Johnson's Exhibit 98 is a state-

ment of the financial condition of First Colony, dated May 31, 1961, and under resources:

"First Mortgage Loans—Insured	$1,833,759.45
First Mortgage Loans in Process—Insured	129,000.00
Cash and U.S. Government Obligation (12,721.88)	307,045.31
Fully Leased Office Building, at Cost Less Depreciation	155,986.02
Office Furniture and Equipment, at Cost Less Depreciation	27,985.99
Systematic Savings Plans—Contra	290,080.81
Other Assets and Real Estate Owned (6,280.80)	17,709.65
Junior Liens—Insured	5,112.85
Total Resources	$2,766,680.09

Capital and Liabilities

Savings Accounts (includes $290,080.81 receivable under systematic savings plans—contra)	2,295,357.82
Loans and Commitments in Process	245,944.32
Reserves, Surplus and Subordinated Stock ($50,000.00)	134,857.60
Advance Payments by Borrower	26,114.93
Other Liabilities and Mortgage Payable—Building ($56,379.90)	64,405.41
Total Capital and Liabilities	$2,766,680.08

By Mr. Doub:

Q. I show you a financial statement of First Continental Savings and Loan Association as of July 31, 1961, and ask you if you received that statement and it came from your file? A. I did, and at my request I received the statement.

Q. From whom? A. I don't recall how it reached my

office, but I did receive it from First Continental Savings and Loan Association.

(Mr. Doub) I offer it in evidence, Your Honor.

(The Court) Is there any objection?

(Mr. Genn) The same objection.

(The Court) It will not be admissible against Mr. Edlin. The Government doesn't object. It will come in subject to cross examination.

(The Clerk) Defendant Johnson's Exhibit 99 marked in evidence.

(Defendant Johnson's Exhibit 99 was marked in evidence.)

(Mr. Doub) (Reading)

"First Continental Savings and Loan Association, Inc.

Condensed Balance Sheet

July 31, 1961

Assets

Cash on Hand and in Banks	$1,760,522.29
U. S. Government Bonds	4,350.00
First Mortgage Loans	4,505,031.97
Loans on Savings Accounts	500.00
Deferred Charges and Other Assets	16,453.77
Leasehold Improvements and Equipment	33,573.61
Total Assets	$6,320,431.64

Capital and Liabilities

Savings Accounts	$3,132,947.03
Accounts Payable and Accrued Taxes	12,014.47
Loans and Commitments in Process	2,561,598.56
Stock, Surplus and General Reserves	613,871.58
Total Capital and Liabilities	$6,320,431.65

"In my opinion, the above Balance Sheet fairly presents the financial position of the First Continental Savings and Loan Association, Inc., as at July 31, 1961.

JAMES C. WHITE
Certified Public Accountant."

(By Mr. Doub:

Q. Now, Mr. Johnson, I show you a check dated 5-5-61, drawn on your special account in the Exchange and Savings Bank, payable to Frank W. Hales, Clerk, in the amount of $14.70, and ask you what that check was for? A. That check is on my legal account at Berlin to the Clerk of the Circuit Court to record a lease that was entered into between First Continental Savings and myself and Mrs. Johnson.

(Mr. Doub) I offer it, Your Honor.

(The Clerk) Defendant Johnson's Exhibit No. 100 marked in evidence.

(Defendant Johnson's Exhibit No. 100 was marked in evidence.)

By Mr. Doub:

Q. Referring to the tabulation which is in evidence of payments you received from May 1, 1961 until the end of the year, did you receive any checks from First Continental Savings and Loan or from Mr. Robinson or Mr. Edlin or Leisure City Land or Charles County Land Company from May 1, 1961, until the end of the year 1961, other than those shown on that tabulation? A. I did not.

Q. Did you ever ask Mr. Edlin to give you any gifts? A. No, I don't recall ever doing that.

Q. Did you ever ask him to give you any cows? A. No, and I didn't receive any.

Q. You stated you never received any gifts from him other than a box of cigars in Jamaica. Did he ever promise you anything? A. Not to my recollection.

Q. Do you recall any conversation in the summer of 1961 or at any other place where there was present Mr. Edlin, Mr. Robinson, Mr. Frank Boykin, Mr. Louis Goldman, and in the course of such meeting or discussion Mr. Edlin saying, "When am I going to get some results? It has been costing me a lot of money, and all I have been getting is a lot of talk. I want results." Did Mr. Edlin ever make that statement in your presence? A. I don't recall his ever making it. I don't remember the meeting.

Q. Well, do you recall Mr. Boykin replying to any statement of that kind, "How dare you speak to me like that?" A. No. It doesn't sound like Congressman Boykin.

Q. Do you recall in the summer of 1961 any meeting in a private dining room at the Congressional Hotel where Mr. Edlin, Mr. Robinson, Mr. Frank Boykin, and Mr. Louis Goldman and yourself were present? A. I do not recall any meeting.

* * * * * *

[TR 3475-3545]

Q. Mr. Johnson, you testified that on May 2nd, you agreed with Mr. Edlin and Mr. Robinson on a fee of $25,000 of which $10,000 would be paid promptly with respect to your work for the land companies. Were all the checks that you received thereafter for those services deposited in your Special Account at the Exchange Bank in Berlin? A. Yes, what I term "my legal account" in Berlin, the Exchange and Savings Bank.

Q. Did you receive any forwarding fees from the other lawyers which you deposited in that Special Account in the year 1961? A. Yes, I had other fees which were deposited in the same account. As to forwarding fees, I recall I received one from Mr. Adelberg, $1,000, which dealt with what we term the "Calhoun Case", a tax case. There was a fee of $3,500 from a Mr. William Adelson, a Baltimore Attorney, matters referred to him in respect to revision and compliance with the regulatory Act dealing with savings and loans.

Q. By what companies? A. I think he represented the First Colony, the First Continental Savings and possibly some other companies, but I know definitely he represented those two.

Then I had another fee from a Mr. Stewart Lynch, who is now a Judge in Delaware. That was $1,500 on a poultry case.

Q. Now, during 1960 and 1961 did you deposit any legal fees which you received from any source in the Johnson & Johnson bank account in Snow Hill, or in any bank account other than your special account at the Exchange Bank in Berlin? A. Well, I know I never deposited any in the Snow Hill Account. I had not been using that for some period of time.

Q. Mr. Johnson, did you ever present or counsel Mr. Edlin as to any of his personal affairs? A. No.

Q. Did you have occasion to have very much contact with the officers of First Continental Savings and Loan or First Colony Savings and Loan? A. No, my work was purely legal and working with and through Mr. Robinson.

Q. And the matters you worked on, were they or not referred to you by Mr. Robinson? A. By Mr. Robinson. There was one exception and that was the proposed loan of one and a half million dollars on the Marrakesh Hotel which I testified to. I think that is the only exception.

Q. Were you at any time a director, officer or stockholder of the Charles County Land Company? A. I was not.

Q. Were you at any time a director, officer or stockholder of the Leisure City Land Company? A. I was not. Purely legal.

Q. Were you at any time a director, officer or stockholder of First Continental Savings and Loan Association? A. I was not with the exception of having a small savings account in the First Continental Savings and Loan.

Q. Were you a director, officer or stockholder of First Colony Savings and Loan Association? A. I was not.

Q. Did you have anything to do with the issuance of and sale of the stock of Charles County Land Company or of Leisure City Land Company? A. I did not.

Q. Were you ever offered by Mr. Edlin a commission or a stock interest in either of those companies? A. Well, I recall on one occasion, maybe two, that a commission was discussed for a share of stock in one or both corporations, yes.

Q. Where did that discussion take place? A. At the Capitol. I think one meeting, maybe one at Lykes Boykin's office. But I know Mr. Lykes Boykin was present at the time.

Q. State whether or not Mr. Lykes Boykin was also offered a commission at the same time, at the meeting in his office? A. There was also a suggestion as to Mr. Lykes Boykin.

Q. And what position did you and Mr. Lykes Boykin take? A. We flatly refused any share of stock or any commissions.

(Vol. 29 [3478]) Q. Now, Mr. Johnson, I now wish to take up your visits to the Department of Justice. I direct your attention to the latter part of February, 1961 and ask you whether at that time there was a discussion about a pending indictment against Mr. Edlin and against First Colony? A. There was.

Q. And will you tell the jury just who was present and [3479] what occurred? A. Sometime I do not remember exactly, but I think it was the last of February, I had a call from Congressman Boykin, telling me that Lykes Boykin, I believe it was, had been in touch with him, and had informed him that there was a pending indictment against First Colony Savings and Loan, Mr. Edlin and certain other parties involving a mail fraud charge.

Q. And what did you and Mr. Frank Boykin discuss as to the consequences of this? A. Well, in the discussion, that we were concerned that it could have a great impact on the development that we were under negotiations with First Colony and First Continental for a very substantial loan, $2.3 million, and our concern was whether that would interfere with the granting of the loan.

Q. Well, now, what did you then do after hearing that? A. I got in touch with Mr. Edlin. I think that was by telephone, and Mr. Edlin stated that it was true; then he went on to state how unjust the charge was, that it was a most unfair, unreasonable accusation. That it had been motivated by certain competitors. He mentioned Federally chartered institutions. Also by a former associate of his, a Mr. Bridges. And that there was certainly no merit to the charge.

[3480] Q. Now, what happened next with particular reference to a visit to Mr. Robinson? A. I think it was either that day or the day following or soon thereafter Mr. Robinson came to see me and told me that Mr. Edlin was greatly concerned as to my conversation with him, that he had talked with Mr. Edlin and Mr. Edlin suggested that he come to explain exactly the nature of the charge.

Mr. Robinson spent considerable time in my office reiterating what Mr. Edlin had stated and going beyond, he had reviewed the legal aspects; that he felt it was certainly without merit; that it was a great injustice that was being done to Mr. Edlin; that it was unfair that he, Mr. Robinson, could assure me that the case would never be found on the basis of the charges brought, that Mr. Edlin was not guilty of the charges.

Q. What did you reply to that? A. I asked him about the indictment, and I told him that I would like to see a copy of the indictment, and Mr. Robinson informed me that the indictment was in Florida and I told him that I would be in Florida in a few days. I would like to read the indictment.

Q. I think in testifying about your trip to Florida in early March of 1961, you testified that you obtained a copy of the indictment from Mr. Robinson [3481] A. I did. I think Mr. Robinson knew that I was coming down and I had told him.

Q. Did you then have a discussion of this matter with Mr. Frank Boykin? A. Yes, I talked with Congressman Boykin soon after my meeting with Mr. Robinson. Congressman Boykin told me that Mr. Robinson had been to see him, had given him a very strong argument; as he expressed it there, as to the great injustice and that he was impressed with the argument that Mr. Robinson had related to him.

Q. Now, after you returned from Florida on March 6, did you have a further discussion with Congressman Boykin? A. I did. I was in Congressman Boykin's office and the matter was again discussed and we both had the feeling that there was some merit to what Mr. Robinson had stated and I believe it was Congressman Boykin who stated that he thought the thing to do was to let the Attorney General take a look at it, as he expressed it, and to see whether or not there was merit to the case.

Q. And was anything said at that meeting about arranging an appointment with the Attorney General? A. Congressman Boykin asked me if I knew the Attorney General. I told him I did not know him. The Congressman told me that he knew him. He knew the family quite well. As to an appointment, he would be glad to [3482] arrange it.

Q. In that discussion with Mr. Boykin, was there any reference to the so-called Dranow treasury note matter? A. It was. In the meeting Congressman Boykin told me that he had—or just prior thereto—had been the guest, I believe, of the Attorney General for dinner. That there was a discussion as to what we term the Dranow matter in which there was some involvement of James Hoffa. And the Attorney General was very anxious to get a

memorandum and Congressman Boykin stated that he had promised the Attorney General such a memorandum.

Q. And was anything said by Mr. Boykin as to who he had asked to prepare such a memorandum? A. He told me he had been touch with Mr. Robinson, and that Mr. Robinson had promised—he went further and said that he certainly was not going to get in touch with the Attorney General on any matter until he got the memorandum which he had promised the Attorney General.

Q. At that time, Mr. Johnson, had Mr. Edlin or Mr. Robinson asked if you would discuss this case with the Attorney General? A. Absolutely not, and I want to make it clear that neither one had mentioned about going to the Attorney General of the United States.

Q. Well, do you recall when Mr. Edlin or Mr. Robinson [3483] or both were told that you and Mr. Boykin might go to the Justice Department? A. It was some days following the meeting that I referred to with Congressman Boykin. There was a meeting attended by Mr. Edlin and Mr. Robinson in which the matter was discussed.

Q. Well, was Mr. Edlin pleased or displeased? A. Mr. Edlin seemed to be pleased. He said that he was anxious that the case be considered on its merits. He again took the position which he had always taken, that it was a malicious charge; it was unfair. And I think I mentioned to Mr. Edlin at the time that any meeting with the Attorney General for review, there must be full disclosure of his defense and that he must, of course, consider that before it was reviewed.

He said he had no concern about giving his full defense to the Attorney General.

Q. Will you state whether or not Mr. Edlin made any suggestions as to whether the visit that you and Mr. Boykin had contemplated making to the Attorney General might be postponed and if so, why? A. Yes. At the meeting there was a reluctance on the part of Mr. Edlin as well

as Mr. Robinson, to have a meeting with the Attorney General.

[3484] Q. Why? A. Because of the Dranow matter. At that particular time there was an alleged claim against First Continental Savings and Loan for the $100,000 and negotiations were under way with the Teamsters, or representatives, as I understood it, possibly to settle the claim and they felt that, if there were a report to the Attorney-General, and investigation, it might prevent the continuation of those negotiations.

Q. Now, Mr. Johnson, was Mr. Lamar Caudle at the meeting to which you have just referred? A. I do not know—I do not recall. He could have been but I do not recall.

Q. Now, what, if anything, was said in the meeting to which you have just referred about a memorandum about the case being prepared? A. During the conversation I addressed myself to Mr. Robinson and told him that, if there were a meeting before the Attorney General for review, that I would have to have some report on the case. I knew nothing about it. I did not feel that I could intelligently discuss the matter with the Attorney General and I also made the suggestion that I thought the Attorney General may require such a report.

Q. And did Mr. Robinson say he would or would not prepare a memorandum such as this? A. He may have but I do know later he did send a memorandum.

(Mr. Doub) May I have Government Exhibit 93, 94 and 95?

By Mr. Doub:

Q. Now, I show you Government Exhibit 93 which is a photostat : copy of a letter from Mr. Robinson addressed ot you, or purports to be; it is dated March 20, 1961, and the first sentence says: "I enclose herewith the first pages of the memorandum, togethre with a portion of Exhibit 'A' to be the first of the exhibits attached to this mem-

orandum. I have not, of course, attempted any revision; this is the first draft and although possibly somewhat lengthy, may very well be the final draft. I expect to send you the pages daily as they are completed."

Do you have the original of that letter? A. I do not, but I recall receiving this letter.

Q. And is the first— A. As I say, I may have it, but my files have been disturbed and I did not find it.

Q. Now, is the memorandum or the first part of the memorandum which Mr. Johnson refers to in that letter— A. Mr. Robinson.

Q. —Mr. Robinson refers to in that letter of March 20, is that a part of the memorandum which was later submitted to the Attorney General? A. It was.

Q. Now, I show you Government exhibit 94 which purports to be a photostatic copy of a letter from Mr. Robinson to you dated March 21, 1961 and ask you whether you have the original of that letter? A. I do not have the original but I did receive it.

Q. You did receive it? A. Yes.

Q. Now, this letter states:

"Dear Tom:

"I enclose herewith for your examination and study, the next section of the memorandum Re The First Colony Indictment. I am well aware of the length of this memorandum and I am sure that you both desired and expected a shorter work. Mr. Caudle and L. L. Robinson, my father, who are both familiar with this case, feel as I do, that the length is unsatisfactory, but that the defenses and objections to this indictment cannot be reasonably presented in shorter form."

Now, I show you Government exhibit 95 which purports to be a photostatic copy of a letter from Mr. Robinson to you.

(Mr. Williams) Your Honor, I would like to interrupt Mr. Doub for a moment.

Government exhibit 94 has been heretofore identified but it is not in the record.

(Mr. Tydings) Well, we will ask that it be admitted in evidence as soon as Mr. Doub finishes.

(Mr. Williams) Part of it has been read. We think it should go in to the record.

(Mr. Tydings) We agree but it was objected to by all defense counsel when we tried to enter it into evidence.

(The Court) Do you wish to offer it?

(Mr. Doub) I will offer it.

(The Court) Why don't you read the whole thing or, if you want, Mr. Marion can read it?

(Mr. Doub) March 21, 1961.

"Dear Tom:

"I enclose herewith for your examination and study, the next section of the memorandum Re The First Colony Indictment. I am well aware of the length of this memorandum and I am sure that you both desired and expected a shorter work. Mr. Caudle and L. L. Robinson, my father who are both familiar with this case, feel as I do, that the length is unsatisfactory, but that the defenses and objections to this indictment cannot be reasonably presented in shorter form. I am sure that I have made the conference more difficult for you and Frank, and it will be difficult to require the reading of this entire memorandum, but I, at least, do not feel that a reasonable understanding can be had of this indictment or the defenses to it unless a full explanation is given.

"Thanking you in advance for your patience, I am,

"Very truly yours,

"W. L. Robinson."

(The Clerk) Mr. Doub, may I please have that to mark?

Government exhibit 94 previously marked for identification now marked in evidence.

(Government exhibit 94 marked in evidence.)

By Mr. Doub:

Q. Now, I show you government exhibit 95, which is in evidence, from Mr. Robinson to you and ask you if you have the original of that letter? A. I do not have the original but this is a copy of the original that I received.

Q. And I notice the first sentence reads:

"I enclose herewith the final pages of the proposed memorandum together with the balance of the exhibits, excepting, of course, such information as you may be able to add in regard to the payment of the initial dividends by Federal and excepting a copy of the Cassell Sales brochure which I believe to be attached as a part of the exhibit.

"I also enclose a synopsis of the indictment which while wholly inadequate, I believe as an overall defense, may serve in some degree to emphasize the weakness of this indictment.

"I will bring, of course, the original of each document with me on my arrival in Washington Thursday evening."

[3489] What happened after that,—what happened on March 22? A. Well, on March 22, 1961, I was advised by Congressman Boykin that an appointment had been made with the Attorney General to see him on a personal matter for March 25, 1961.

Q. Now, will you tell the jury what occurred at the meeting on that day in the Attorney General's office? A. Congressman Boykin and myself went to see the Attorney General. We arrived, we had to wait some minutes. He was busy. Finally, he came out of the outer office, [3490] and spoke to us and took us into his private, or his large office.

The first conversation dealt with pleasantries because Congressman Boykin, presumably, knew all of the family and asked the Attorney General and his wife, about his father. We touched on some of the legislation.

Then Congressman Boykin spoke of the land development in Southern Maryland which was referred to as "Boykin City." The Congressman spoke, that over a period of years, he had assembled this 8,000 acres, that it had been a difficult task but that it would some day, or he hoped soon be a new city since it was only approximately 20 miles from Washington.

The Congressman spoke that a firm named Desser & Garfield were developing the tract, that there was a $6 million mortgage on the property, that if the development continued and was successful, that mortgage would be paid off and he told the Attorney General that he would pay personally income taxes of approximately $2 million. The Attorney General seemed to be very pleased as to the amount of taxes that the Congressman would pay the Government.

Furthermore, Congressman Boykin spoke of the great work, the legal work that I had been doing with respect to [3491] the development.

Then I told the Attorney General that it was true that this development was under way but it needed capital, that two savings and loan associations, First Colony and First Continental Savings and Loan, were negotiating with Desser to loan some $2 million; That I, through an attorney for the Association, had been and was representing the Associations: That we had been in constant negotiations, trying to effect this loan which would mean so much to Southern Maryland; that it had reached an impasse because of the pending indictment against Mr. J. Kenneth Edlin, First Colony and certain others; that this indictment likely would prevent or seriously impair the loan which was pending. Furthermore, I spoke of the local economy, there were to be plants put in Southern Maryland, what it would mean

to Southern Maryland as a distress area. Furthermore, I called to the Attorney General's attention that neither Congressman Boykin nor myself were there to ask for any favors or to interfere in any way. That we had talked with Mr. Edlin and counsel, that these parties told us that there is questionable merit to the pending cases.

We went into quite a lot of detail as to what had been told us. How the case had been motivated as we were told, by the Federally chartered institutions to [3492] rid them of the competition of the independents. Furthermore, the disgruntled associate, Mr. Bridges, who had also given trouble and had tried to press this case.

Q. What did you ask the Attorney General to do? A. So, ultimately, after advising him of our position in the matter as to the legal work and counsel of Mr. Boykin's interest, we asked if he would review the case on its merits.

(The Court) I do not understand what you mean. You say after telling him of the legal work and counsel and what Mr. Boykin had done. I think you had better be more explicit so we can tell just what that means.

(The Witness) Well, Mr. Boykin had gone into detail as to his originating this large tract of land and making one composite 8,000 acres of it. Also, as I stated, that he was interested in the $6 million mortgage; that in that mortgage he, if paid off, would pay substantial taxes and he was interested in seeing that the project would go forward.

I spoke as to the pending loan, that I had represented and was representing the lending institutions, First Colony, which was under indictment, and First Continental; that, because of the pending indictment, we were having difficulty in proceeding with this loan; that we [3493] asked for a review of the case on its merits.

By Mr. Doub:

Q. Now, what did Mr. Kennedy reply? A. He replied that he had never heard of the case, that we should submit

a memorandum, a full memorandum dealing with the entire matter.

Q. In the course of that meeting were any charts and plats shown to him with respect to the Boykin City development? A. Yes, there were three plats shown to him, known as, I think they referred to them, "Boykin City." They projected the shopping center, the type of homes to be built, a country club and there was some discussion as to the name. I think the Attorney General had some amusement over the name "Boykin City." The Congressman said, perhaps that may be changed, but in the memorandum the Attorney General went further and stated that it was to be sent by special messenger, personally to him. And even further in his direction to us that I or Congressman Boykin with me would see him the following Thursday at his office.

Q. After the March 25th meeting with the Attorney General what occurred? A. In compliance with his request, I was to see him the following Thursday. I felt that I should be in the District for some occasion and I wrote to the Attorney [3494] General asking that I see him at a later date, sending a memorandum to him.

Q. Is that the letter in evidence, Mr. Johnson, your note to him, is that in evidence? A. I think it is, yes.

Q. Now, did you have any talk with Mr. Robinson about the submission of this memorandum as requested by the Attorney General? A. Yes, following the meeting with the Attorney General, I did see Mr. Robinson. I told him that the Attorney General requested a full and detailed memorandum; that I did not have sufficient information about the matter, that it would be suggested by me that he, Mr. Robinson, prepare a memorandum.

Q. And did he then submit to you such a memorandum? A. Well, he had under preparation a memorandum and he did submit to me later a memorandum.

(Mr. Doub) Now, Government exhibit No. 86-A is a letter dated March 28, 1961, from you, Mr. Johnson to the Attorney General and it states:

"Pursuant to your suggestion on Saturday past, I am happy to deliver by messenger the enclosed memorandum.

"As I will be in the District for the Easter recess, I would appreciate the opportunity of calling you on my return Monday week, rather than on Thursday next."

Now, did you make any changes in this memorandum which had been, you say, prepared by Mr. Robinson?

(The Witness) You are speaking now of the second portion of the memorandum. There are two memorandums.

By Mr. Doub:

Q. Yes, I am talking first about the lengthy synopsis and exhibits. A. I suggested changes. Mr. Robinson asked that I look over the memorandum. I read it hurriedly. I notice he had reference to the Department of Justice which could be construed rather derogatorily and I suggested that be eliminated and he told me it also appeared in two or three other places of his memorandum and that was the only changes made.

Q. Did you make those changes or did Mr. Robinson? A. He made those. He was in the office. I told him that I wanted to get the memorandum to the Attorney General as requested.

He asked the use of one of the secretaries, and one of the secretaries in the office made the changes for him.

Q. Now, I notice Government Exhibit 86-B, which is a two-page preliminary memorandum, on top of this long lengthy memorandum is included. Was that suggested by you? A. Yes, I told him that I did not think the synopsis that he had prepared fully disclosed—

Q. Louder, Mr. Johnson. A. I thought that there should be further explanation and that I suggested to him a brief outline of the case other than on the legal points.

Q. Now, did you and Mr. Robinson prepare this brief outline then? A. No, at the time he was making changes

on the other that I referred to, he also dictated and that was typed in the office—the two pages.

Q. In your office? A. Yes.

Q. All right.

(Mr. Doub) Now, I would like to read this two page memorandum but I promise not to read the rest of it.

(The Court) It has been read once.

(Mr. Tydings) That is all right. The Government would just as soon have him read it again.

(Mr. Doub) I would like to read it again, Your Honor. It has been a long time.

"Over a period of months, negotiations have been under way, dealing with the financing of a residential and commercial development known as 'Boykin City' located in Southern Maryland, some twenty miles from Washington, D. C., by and through First Colony Savings and Loan Association, a Maryland Corporation organized in 1958 with its principal place of business in Prince Frederick, Maryland, Southern Maryland.

"The initial loan will be in excess of $2 million and will provide housing, a country club, golf course, modern shopping center, streets, sewer and water system, and other improvements.

"In addition, the 8,000 acre tract will also include a commercial development and interest has already been shown by certain corporations to locate their plants in that labor-surplus area. At the present time, however, First Colony, together with certain individuals are under indictment in the United States District Court of Maryland and the constant danger of publicity in respect to the indictment and the certainty of news releases during any trial of this subject matter is of grave concern to all parties involved, especially as it affects the availability of funds for the Boykin City Development.

"Accordingly, a careful study has been made of the indictment, the complete file reviewed and discussions held with various representatives of the Association. It would appear that the indictment in question may have been greatly motivated by the activities of one James W. Bridges who, apparently seeking vengeance, conferred with the U. S. Savings and Loan League officials, representing Colony's major competitors and presumably with their advice and assistance, contacted the Postal Department. As to the degree of pressure and influence brought by the League, it is difficult to ascertain, but in the normal course of events, if any of the advertisements of First Colony were in fact, questionable, then a conference could have been held between representatives of the Association and the Postal Department.

"It is interesting to note that many of the activities common to the industry that might possibly be questionable do not appear with respect to this particular Association. In the examination, no loans directly or indirectly appeared to have been made to officers or directors of the Association, nor does there appear that any business is being done with insurance agencies or title companies owned or represented by officers or directors of the Association, or members of their families.

"Annual audits have likewise been made by independent certified public accountants and from the statements resulting, the Association appears to be in splendid financial condition, capable of fulfilling its commitment to the Boykin City project.

"In a general discussion of the Boykin City loan, request was made for detailed memorandum for each and every paragraph of the indictment. With the consent of the Association, an additional copy has been secured and the same is enclosed herewith so that a better understanding may be had of the pending matter."

[3499] By Mr. Doub:

Q. Now, the Attorney General testified that you and Mr.

Boykin met with him on April 12, 1961. What occurred at that meeting? A. At that meeting, it was in response to his request to see him, and he wanted to advise us that he was [3500] desirous of a review of the case on its merits and that he had referred the case to Mr. Herbert J. Miller, who was head of the Criminal Division of the Justice Department.

Q. Do you mean he had referred the case, or do you mean he referred this matter of the review to him? A. The matter of the review was referred to Mr. Miller and just at the close of the meeting on that date, Mr. Miller came in the office of the Attorney General, and the Attorney General introduced Congressman Boykin and myself to Mr. Miller, and the Attorney General, in his closing remarks or near the close of the conference, said that we were to get in touch with Mr. Miller.

Q. Well, now, was that a long or a short meeting? A. It was very short because at all of the meetings with the Attorney General—he is quite a busy man, he is usually on the telephone or people are in and out of his office.

Q. Did he indicate that he had had an opportunity to read this memorandum you had sent him before? A. No, he did not say anything as to that.

Q. Now, the records of Mr. Miller indicate that you and Mr. Boykin had a meeting with Mr. Miller in his office on April 17, 1961. What is your recollection as to what occurred at that meeting? [3501] A. Well, that meeting was in response to the Attorney General's suggestion that we see Mr. Miller; that was more or less, as we term, "a rehash" of what was said to the Attorney General. The plats which had been shown to the Attorney General were also shown to Mr. Miller.

Congressman Boykin went again into how the land was acquired, about the mortgage, the development. I informed Mr. Miller that I was acting as the Attorney for First Colony through a local counsel.

I think he even mentioned Mr. Robinson's name, that we had difficulty in respect to the loan on account of the pending indictment. Also, there was the same conversation about how Mr. Edlin thought he had been unjustly treated, the motivation for the case being in the Justice Department. And that he made it clear again that neither Congressman Boykin nor I were there to seek any favors nor did we want to interefere with the Department in its operation.

Q. Now, did Mr. Miller indicate that he had had an opportunity to read over this memorandum which you had sent to the Attorney General and which the Attorney General had turned over to Mr. Miller? A. No, it was a very short meeting and Mr. Miller stated that—I believe he had only been with the Department a short time—he had been busy. He had not had a [3502] chance to read the memorandum and he asked if Congressman Boykin and I would return at a later date.

Q. Now, the records of Mr. Miller's office indicate that you and Mr. Boykin met with him on May 3, 1961. What happened at that meeting? A. Well, at that meeting it dealt mostly with the Dranow matter. Although I had told Mr. Miller that I wanted to discuss the First Colony case, which I think the memorandum shows, that that was my request, but the discussion dealt with the Dranow matter, and we went in to quite detail on what information Congressman Boykin and I had respecting this situation.

Q. Now, the Court has said, Mr. Johnson, that you may refresh your recollection about this Dranow matter by looking at your exhibit No. 54 which is a memorandum you have testified to that you prepared.

Now, refreshing your recollection with that will you tell the jury what you told Mr. Miller about that Dranow matter? A. As I stated, Mr. Miller seemed to have a great desire for all the information that could possibly be given in regards to this Dranow matter. I had discussed the matter with parties of interest before. I had prepared this memorandum and I did give Mr. Miller fully all the information that I had.

Q. Well, tell the jury what you told him? A. I told him that Mr. Edlin had been contacted some time before by parties in Miami for a loan of $400,000, and it was alleged that that was in respect to the Sun Valley Development and that the party contacting him had referred to—

Q. Who was the party contacting him? A. Well, the person was Mr. Harold Shapiro who was a Miami Beach Attorney. If you do not mind, I have not seen this memorandum for some time and I just want to—

(The Court) If it does not refresh any present recollection, Mr. Doub, you can offer it in evidence, I suppose.

(The Witness) May I read it?

(The Court) Unless the Government objects.

(Mr. Tydings) If you recall the statements in there. He said he did not recall who told him and the whole thing we think is—

(Mr. Doub) It is perfectly immaterial whether Mr. Johnson had direct personal knowledge of what occurred in Miami with respect to loans and the purchase of this note, Your Honor.

(The Court) But he cannot use a paper to refresh his recollection if it does not refresh his recollection.

Now, if his recollection is refreshed, he can use it.

(Mr. Doub) Could we do this, Your Honor? Could we have a five minute recess and give Mr. Johnson the opportunity to read it carefully.

(The Court) I think this should be done before the Jury. The Jury ought to see what he is doing before he testifies.

(The Witness) I will proceed on if you want me to.

In the conversation I told him that Mr. Shapiro who was the Attorney and former Mayor, I believe, of Miami, or Miami Beach, had advised Mr. Edlin that a man named Ben Dranow and James Hoffa were involved in a subdi-

vision in Florida known as Sun Valley, which at the time was in receivership and that these parties as partners, owned other properties in Florida, that there had been a request for a $400,000 loan to the parties and that Mr. Edlin stated that he wanted to review the collateral that had been offered.

(The Court) Is this what you say you told the Attorney General?

(The Witness) No, what I told Mr. Miller.

(The Court) What you told Mr. Miller. This is what you told him?

(The Witness) As a matter of fact, it was more detailed. What I am trying to get refreshed here is—

(The Court) Did you give him this memorandum?

(The Witness) I sent him a memorandum and that was given to him.

(Mr. Tydings) It is already in evidence. Is that the one Mr. Boykin sent originally, the one that was dictated in your office?

(The Court) So what you sent him is in evidence. You are reading this paper primarily as I understand it. Now, what is this paper?

(The Witness) Your Honor, this is a paper that at the time there was likely to be litigation—in order to ascertain the facts, I prepared a detailed memorandum. I had this in my office. At the May 3rd meeting with Mr. Miller, Mr. Miller seemed to have an obsession as to what was in the memorandum, what I knew about Dranow about Mr. Hoffa. I then went into quite a lot of detail because it was fresher on my mind at that time than now, as to what had been told me.

Following that Congressman Boykin asked for a memorandum which I did give him and he sent to Mr. Miller on May 4, but the memorandum I sent to Congressman

Boykin was not as full as the information which I gave to Mr. Miller at our meeting on May 3.

(The Court) Now, you are entitled to testify to what you gave to Mr. Miller at that time, if you remember it. Now, if you do not remember it, you may use any papers which will refresh your recollection as to what you told him.

Now, do I understand it that the paper which you gave him a week ago would not refresh your recollection but that a paper which you prepared sometime later for some other purpose would refresh your recollection as to what you told Mr. Miller? Is that the basis on which he is using this paper?

(Mr. Doub) He testified that he prepared that after this meeting.

(The Court) He said he prepared it after this meeting for some other purpose.

(Mr. Doub) No.

(The Court) He said he prepared it for some other purpose. Was this prepared before?

(The Witness) This was prepared back in January, 1961 before there was any mention made of the Attorney General.

(The Court) Now, do you say that looking at this paper, you had this paper in your office and not at the Attorney General's office?

(The Witness) Yes, sir.

(The Court) I want to understand the purpose for which this paper is being used. Does this refresh your recollection of what you told Mr. Miller, or is it just information that you had in your office?

[3507] (The Witness) Well, the purpose of refreshing my recollection of what was told Mr. Miller on May 3 at the meeting in his office.

(The Court) What you are now saying is what you told Mr. Miller.

(The Witness) Yes, sir.

(The Court) And looking at this paper refreshes your recollection of what you told him then even though some of the things you say were not in the memorandum that you sent him, is that right?

(The Witness) Yes, sir.

(The Court) All right. He may use it for that purpose.

(The Witness) Continuing, the interest was as to the desire to borrow for Sun Valley, the $400,000. Mr. Edlin stated that he had reviewed the collateral which was a shopping center and other properties and he did not [3508] feel that there was sufficient collateral for the loan. Mr. Miller was quite anxious to ask what collateral was offered, stating that there was an investigation in respect to Mr. Hoffa dealing with certain alleged income tax violations. Also, at the meeting, he brought in the $100,000 loan that Mr. Dranow—not loan, but the sale of a $100,000 note which had been made to First Continental Savings and Loan, that there was quite a lot of discussion as to how that loan took place and how ultimately the Treasury note was discounted at a Bethesda Bank and the money secured on that note at that bank. In the discussion, what Mr. Miller wanted to know was the partnership if any, existing between Ben Dranow and Mr. Hoffa, and at the time of the negotiations of the $400,000 proposed loan, I told Mr. Miller that I had been told that this partnership had been affirmed by a meeting between Mr. Edlin and Mr. Hoffa in Washington, and in addition to the shopping center, there was offered also an office building known as the Fashion Mart Building, so that was generally what was told to Mr. Miller.

Q. Now, what was Mr. Miller's reaction? A. Mr. Miller was quite interested. He told me that there were grand juries meeting. He mentioned specifically in New Orleans, in Miami and possibly other areas. He wanted to know

whether or not Congressman [3509] Boykin and myself would talk to Mr. Edlin and to Mr. Robinson because in the conversation I brought out that Mr. Robinson had been present at one or more of the meetings dealing with the Dranow matter.

Q. Well, what, if anything, did you or Mr. Boykin reply? A. Well, in the conversation, I talked with the Assistant Attorney General, that Mr. Edlin was under indictment on a federal charge, and I distinctly told Mr. Miller that I thought it should be made clear that there would be no favor on the part of the Government in having him go to Florida, that he realized that it would be no benefit in his case, in this case. Mr. Miller wanted to make that clear also which I assured him that would be made clear, that it evolved in the discussion about the $100,000 note. Mr. Miller was concerned whether Mr. Edlin had received part of the proceeds of the note, that if he was a party to that transaction, it may have some effect on any testimony he may give before the Grand Jury.

I told him that I would ask and try to find out whether or not there was any part of the proceeds that went to Mr. Edlin.

Q. Now, after that meeting, what did you do to verify this? [3510] A. Well, I got in touch with Mr. Edlin. I told him that—I think Congressman Boykin was with me—that the Attorney General, or the Assistant Attorney General, Mr. Miller, was vitally interested in what information they had pertaining to the investigation, particularly in Florida, dealing with Mr. Hoffa; that Mr. Miller was concerned as to what implication Mr. Edlin had as to the $100,000 treasury note. Mr. Edlin replied that he had received no benefits from it. What proceeds had been received had been credited for the shareholders in First Continental Savings and Loan.

Q. Now, I show you what purports to be an office copy of a letter of yours to Mr. Miller dated May 9, 1961 and ask you whether you wrote the original of that letter to him? A. I did.

(The Court) Mr. Doub, are you going to offer the whole sheaf of papers there that you have?

(Mr. Doub) In the course of his testimony.

(The Court) Have they been shown to the other lawyers?

(Mr. Doub) I know Government counsel have seen them, Your Honor.

(The Court) Well, do you want to let your associates see them while you are asking about this one?

(Mr. Doub) I think, if we could take a five minute recess, we might save more time.

(Mr. Tydings) I think that may be a good idea. We may have seen them but we do not know which ones he has.

(A brief recess was taken.)

By Mr. Doub:

Q. Now, Mr. Johnson, I show you Johnson exhibit No. 9 which is a letter, which purports to be a copy of a letter from you to Mr. Miller dated May 9, 1961, and ask you to examine that letter and state whether you sent it. A. I did. This is my office copy.

Q. This reads:

"Dear Jack:

"Prior to leaving on Friday past, I tried to reach you by telephone but with no success. I have been able to secure information on the matter discussed in your office which should prove of considerable importance." What was the information to which you refer in that letter? A. At the May 3rd meeting Mr. Miller, the Assistant Attorney General, was much interested in knowing whether Mr. Edlin had received any part of the proceeds of the $100,000. I was to contact Mr. Edlin to determine whether he had received any part of that money.

Q. Now, I show you a letter from Mr. Miller addressed to you, dated May 15, 1961 and ask you if you received that letter? A. I did.

(Mr. Doub) I offer that.

(The Clerk) Defendant Johnson exhibit 101 marked in evidence.

(Defendant Johnson Exhibit 101 marked in evidence.)

[3512] (Mr. Doub) Johnson exhibit 101 dated May 15, 1961 from Herbert J. Miller, Assistant Attorney General, Department of Justice, addressed to Mr. Johnson.

"Dear Congressman:

"In reply to your letter of May 9, I tried to reach you last Saturday but apparently your office was closed and for which I must apologize. I forgot to call earlier in the week.

"I would, of course, be happy to discuss the matter in question with you at your convenience."

Now, after receiving that letter, what did you do?

(The Witness) I communicated with Mr. Edlin. I told him that Mr. Miller was anxious to know the facts pertaining to the $100,000 proceeds.

[3513] Also that Mr. Miller was quite anxious to know whether he and Mr. Robinson would voluntarily go to Florida to Miami and testify in the pending investigation against James Hoffa.

By Mr. Doub:

Q. When did you next meet with Mr. Miller? A. May 22, 1961.

Q. Now, at that meeting who was present? A. Congressman Boykin and myself, we arrived at 11 a.m.

Q. I show you certain papers and ask you what they are and whether you gave then to Mr. Miller at that meeting.

A. I did. I say the conversation opened in respect to the Dranow, or the Hoffa matter.

Q. And what other paper—what are the papers you gave him? A. I told first Mr. Miller, that I had been in touch—gave a report of Mr. Edlin and Mr. Robinson, that I felt there should be documentary evidence presented to show that Mr. Edlin had not received personally any share of the money.

After some delay, I received copies of the bank statement of First Continental Savings and Loan showing the deposit in full of $100,000 for the benefit of the general shareholders.

[3514] Q. Now, the $100,000 to which you refer, is that the proceeds derived from payment of the treasury note? A. That is the total proceeds from the $100,000 treasury note. Also a copy was given to me, a photostat of the ledger sheet of First Continental Savings and Loan showing that their entries also conform the receipt of the full amount.

Q. Now, state whether or not you gave photostatic copies of the bank statement and the ledger sheet to which you have just referred to Mr. Miller at that meeting? A. I did.

Q. And are these copies? A. They are additional copies.

(Mr. Doub) I offer them, Your Honor, collectively, as one exhibit. I suggest that they be marked Exhibits A and B.

(The Clerk) Defendant Johnson exhibit 102 marked in evidence.)

(Defendant Johnson exhibit 102 marked in evidence.)

By Mr. Doub:

Q. Mr. Miller's letter to you of May 15, 1961, Mr. Johnson, refers or states that he had telephoned you on Saturday, May 13, I show you Government exhibit 144, purporting to be a consolidated list of all telephone calls made to and from Mr. Miller's office and ask you if that telephone call which Mr. Miller wrote you he made on

that date is on that list? A. No, I do not see it on this list.

[3515] Q. State what, if anything, you told Mr. Miller as to whether at this—and I mean at this meeting on May 22, as to whether Mr. Edlin and Mr. Robinson were or were not willing to appear before the Grand Jury in Florida and testify? A. I told him they were rather reluctant to go but that they would go, and Mr. Miller then stated that he would arrange for someone from his department to interview them, and arrange the date on which they were to appear in Miami, and that he understood that they would go voluntarily without a subpoena.

Q. Now will you state whether, at this meeting, any reference was made to the land companies? A. Yes, it was entirely secondary because the interest was more in respect to Mr. Edlin and Mr. Robinson appearing. I told Mr. Miller to bring him up to date which I did at practically each of the meetings as to what was transpiring in the land development; that I was proceeding with foreclosure on the land development and that the sale—I do not know whether I told him what date—but that there would be a sale.

[3516] Q. You mean a public foreclosure sale? A. A public foreclosure sale. I may say, too, at that meeting, I think it was that meeting, he wanted to know what my interest was in the land company, and I told him I was the Attorney for the land company, and not only in Maryland but in Virginia.

(Mr. Tydings) Mr. Doub, I wonder, the Congressman is referring to some notes—I wonder if you would mind having them marked for identification, the notes he is referring to. The whole file there, because it may become pertinent, specifically those notes which he has been referring to.

(The Court) I think we can do like we did the other day. Just put them off on the side table, as he uses a paper to refresh his recollection, he puts it off on the side table.

(Mr. Tydings) Could we have it marked at this time, Your Honor.

(The Witness) My folder is marked "Attorney General."

(Mr. Tydings) There are some specific notes in there which he has been referring to which I would like to have marked for identification. He can tell Mr. Doub which ones he has been referring to.

(The Court) Let them be marked A and B.

(The Clerk) Defendant Johnson's exhibit 103 A and 103-B marked for identification.

(Defendant Johnson's exhibits 103-A and 103-B marked for identification.)

(The Witness) And also, Mr. Doub, the consolidated lists I have been referring to which are already in evidence.

(Mr. Doub) Is that Government exhibit 144?

(The Witness) Yes, sir.

(Mr. Tydings) You are using Government exhibits to refresh your recollection as to the dates and the time of the meeting?

(The Witness) Yes, sir.

(The Court) That is a copy of Government Exhibit 144, that is in evidence.

(The Clerk) Yes, it is.

(The Court) Unless Mr. Johnson has had something added to it. You have just the straight exhibit.

(The Witness) Yes, nothing added to it. I think there is some writing. That is Mr. Doub's writing. It is not mine.

(The Court) That is all right.

[3517] By Mr. Doub:

Q. You state you told him about the land companies, Mr.

Johnson. Will you state whether or not their names were mentioned or not? [3518] A. I know as to Charles County and I think I referred only to the tract as the tract in Virginia. I cannot say that I mentioned Leisure City at that time.

Q. When was the next meeting that you had with Mr. Miller? A. The meeting was on June 27—let me check.

Q. My notes indicate June 12. A. June 12, excuse me. June 12.

Q. That was three weeks later. Now, tell the jury what occurred at that meeting.

A. On the 12th, there was also a continuation of discussion in respect to Mr. Edlin, Mr. Robinson— there was discussion on the pending loan.

Q. Now, wait a minute. When you say Mr. Edlin and Mr. Robinson, what with respect to them? A. Their part in appearing before the grand jury in Miami.

Also discussion about the pending loan of First Colony participated in by First Continental, respecting land development.

Q. Now, what, if anything, was said by Mr. Miller as to what was in his file about Mr. Edlin?

A. During the course of the conversation, I was sitting at the desk with Mr. Miller.

Congressman Boykin was present and Mr. Miller had before him the file dealing with First Colony, I presume the other defendants, too, and he opened the file and remarked what—

[3519] (Mr. Genn) Object to this conversation. I have the same objection as previously as to Mr. Miller's testimony, * * *

(The Court) On what ground?

(Mr. Genn) On the grounds that I previously stated with respect to contents of a conversation in so far as—

that is, the contents of what was said or the contents of the file, or conversations about the contents of a file; I think I have indicated my objection to them. Purportedly for the truth of what was stated in those particular conversations.

(The Court) I do not understand what you mean "purportedly for the truth." Mr. Johnson is testifying to what was done by him in an effort to have an indictment reviewed.

Now, the issue, he has said that he was there, that that is what inaugurated this series of questions— this series of meetings. Now, the issue in the case is whether what was done there violated the statute or whether it did not. But the evidence of what happened there would certainly seem to be relevant if it was done for the purpose of either postponing the indictment against your client. Your client knew about it and the Court has held that there was or that there is evidence sufficient to go to the jury on the issue of conspiracy.

(Mr. Genn) Well, if the Court please, my objection was to the statements from the Government file which would suggest that there may be some truth on this in those particular statements, and in so far as it relates to the previous objection I have made when this issue arose. The conversations purport to suggest that what Mr. Miller was stating was an accurate fact.

(The Court) I did not understand Mr. Johnson was undertaking to vouch for Mr. Miller.

(Mr. Genn) I did not say that, nor did I suggest that by my objection.

(The Court) I do not understand your point, then. If you can make your point clear, I will try to rule on it. If you say that it purports to be offered for the truth of what was said, that is not my understanding of why Mr. Johnson is offering it—why Mr. Doub is offering it. It purports to be shown—

(Mr. Genn) It is in reference to what Mr. Miller says a government file stated and I think, if that is—

[3520] (The Court) If he said it in connection with what Mr. Johnson was trying to do in order to get an [3521] indictment against your client postponed, it is admissible against you.

(Mr. Genn) I have made my objection, Your Honor.

(The Court) I overrule it.

(The Witness) Sitting at the desk, Mr. Miller opened a file, stating that he had gone through the file of First Colony, also with respect to Mr. Edlin; that he did not know whether he should disclose to us the information, but in the review, he felt that, perhaps we should know what the report contained on Mr. Edlin.

We asked him what it was. He stated that—Mr. Miller stated—the report showed there were two and possibly three previous convictions.

By Mr. Doub:

Q. Of Mr. Edlin? A. Yes. Furthermore, that Mr. Edlin had been involved in a savings and loan association in Chicago known as "The Corona Savings and Loan Association."

Q. What was the reaction of Mr. Boykin and yourself to that? A. I think Mr. Miller answered that better than I could. He said that both Congressman Boykin and myself were greatly surprised and disturbed about that information.

Q. You mean when he testified here? [3522] A. That is what he testified to.

Q. Now, what did you or Mr. Boykin reply? A. We told Mr. Miller that it came as certainly a shock to us, that Mr. Edlin had been asked time and time again as to his past record. He had informed us that some years ago approximately 20 years ago, there was involvement in a criminal

matter, that since then there had been nothing, that it was not true of any dealings that he had had since or at that time; it was later I discussed it, but I told him that I had told him that Mr. Edlin had told me there was only that one conviction.

Q. What did Mr. Miller then say? A. Mr. Miller stated he had to rely on what was in his file, that if it was false and not accurate, he would like to know. If we could get the information that it was not accurate, that he would like to have it because the Department certainly did not want to have a false report in its file.

Q. Now, after leaving that meeting, what did you and Congressman Boykin do? A. Well, in a very few minutes we tried to get in touch with Mr. Edlin. Finally, we did locate him. We had him to come to Congressman Boykin's office. We confronted him with the information we had gotten from Mr. Miller.

[3523] The reply on the part of Mr. Edlin was that it was not true, that it was a part of the investigation conducted by the Postal Authorities which gave false information, that he could prove it was not true.

We asked him what proof he had, and in Congressman Boykin's office he asked if he could use the telephone. Before Congressman Boykin and myself he went to the telephone, he called Chicago on his credit card. He called a Mr. Meyer who was—as he told us—a probation officer in Chicago; there was some delay because Mr. Meyer had to be located. In a few minutes the call was completed and Mr. Edlin talked with Mr. Meyer.

Q. And did you hear Mr. Edlin's end of that telephone conversation? A. I was present at the conversation. Mr. Edlin stated that there had been reports of several conversations, that he asked Mr. Meyer whether that could be confirmed as not being true, that he knew Mr. Edlin.

After some one or two minutes, Mr. Edlin asked Congressman Boykin to come to the phone, then he asked Mr.

Meyer that is, Mr. Edlin asked Mr. Meyer to tell Congressman Boykin what was the true record of Mr. Edlin.

Congressman Boykin went to the phone and listened for I would say a minute or so.

[3524] Q. Now, after Mr. Boykin hung up, what did Mr. Boykin tell you he had said? A. I think all that Mr. Boykin did was listen as far as I can recall but he did tell me that Mr. Meyer had confirmed that Mr. Edlin had had only one previous conviction.

Q. Did Mr. Boykin ask Mr. Meyer to come to Washington? A. No.

Q. He did not? A. Not in my presence.

Q. Did you ask Mr. Meyer to come to Washington? A. Absolutely not.

Q. Did you talk to him on the telephone at any time? A. Not that I recall.

Q. When Mr. Boykin was on the telephone with Mr. Meyer, did he tell Mr. Meyer that he would pay Mr. Meyer's expenses to Washington? A. Absolutely not.

Q. Now, do you know whether Mr. Edlin later requested Mr. Meyer to come to Washington? A. No, I do not, but I know he came to Washington.

Q. You know he came? A. Yes.

Q. And who was with him when you first saw him? A. The first time that I saw Mr. Meyer was in my office in the early morning of June 15, 1961, and with him I recall, was Mr. Robinson and whether Congressman Boykin came with him or came in later, but Congressman Boykin was there at the time that Mr. Meyer was present.

Q. Did you pay or contribute to Mr. Meyer's expenses in traveling from Chicago to Washington and return? A. Absolutely not.

Q. Now, Mr. Miller testified that you and Mr. Boykin

brought Mr. Meyer up to his office and that was on what day? A. June 15, 1961.

Q. In your office before going up there with Mr. Boykin and Mr. Meyer, had you had any conversation with Mr. Meyer? A. I did. Mr. Meyer was in my office. I would say, oh, five or ten minutes the morning of June 15.

And there was a conversation.

Q. Did you ask him about Mr. Edlin's record? A. I did.

He stated that he had been a close friend of Mr. Edlin, that he had been assigned previously as probation officer and since his duties had ceased in that capacity, he had continued a very close relationship and then he proceeded to tell me of his personal knowledge that there had been only the one conviction.

Then he talked about the one conviction, how he had investigated that case and that the verdict had been secured on very questionable evidence. In fact, I think he stated that he was so disturbed about it that he reported to the Court and he was concerned about his job at one time.

Q. Now, when you and Mr. Boykin took Mr. Meyer up to Mr. Miller's office, did you introduce him to Mr. Miller? A. I did. I think it was stated we went to the Attorney General's office, that is, Mr. Kennedy.

We went straight to Herbert Miller's office, the Assistant Attorney General.

Q. And what happened after you arrived there? A. We arrived. Congressman Boykin, myself, Mr. Robinson, and I recall Mr. Meyer.

Mr. Miller was introduced either by myself or Congressman Boykin stated it was in reference to the report they had told us about, that Mr. Miller had told us about previously, that Mr. Meyer could give some information.

Mr. Miller stated he had an appointment, that he wanted the information, he was going to assign someone in the

Department and I think he named a Mr. Cassidy, who would handle the interview.

Congressman Boykin, myself, we both told Mr. Miller that we had committee meetings. We could not remain. We only stayed, I think, not over three or four minutes and returned to the Capitol.

Q. Now, did, Mr. Johnson, you ever see Mr. Meyer again after you left Mr. Miller's office? A. I did not see him again until he was in court a week or so ago.

Q. Is this an office copy of a letter you wrote to Mr. Miller the next day on June 16, 1961? A. Yes.

(Mr. Doub) May I offer it in evidence?

(The Clerk) Defendant Johnson exhibit No. 104 marked in evidence.

(Defendant Johnson Exhibit 104 received in evidence.)

(Mr. Doub) It is dated June 16, 1961, addressed to the Honorable Herbert J. Miller, Assistant Attorney General, Department of Justice.

"Dear Jack:

"I would appreciate your giving me a call after you had an opportunity to review the report submitted yesterday by the party from Chicago.

"Best Regards,

"Sincerely yours."

[3528] By Mr. Doub:

Q. Now, when was your next meeting with Mr. Miller? A. June 27, 1961.

Q. What occurred at that meeting? A. It was of vital interest to Congressman Boykin and myself as to what that report was pertaining to Mr. Edlin which also reflected on the First Colony and First Continental.

We went to Mr. Miller to secure information on the report dealing with Mr. Edlin.

Q. The written report which, you mean that Mr. Meyer had given Mr. Cassidy? A. The report that we were desirous of any report, to know whether or not there had been other convictions, other than the one which was some twenty or more years ago.

Q. What did Mr. Miller tell you? A. Mr. Miller stated that the report was a very detailed report. He told us that it contained only the one conviction which was some 20 years [3529] prior. He told us that he was convinced that was the only conviction.

Q. Do you recall anything else that happened at that meeting? A. Yes, I went again into my problem with the legal problem that I had for First Colony and First Continental in respect to the loan.

Mr. Miller was advised that that matter was still pending, the development had not gone forward and that I would like to discuss further just whether he had any suggestions relating to a solution of our problem.

Q. Well, now, I am not very clear from what you have said as to just what the problem was. A. The problem at the time that had developed, that in view of the indictment pending against First Colony and Mr. Edlin that difficulty arose for approval by FHA of the lending institution which in this case would have been one of them, First Colony and also FHA questioned the connection of Mr. Edlin with the Associations as further objection to approving the lending institution.

Q. Will you state whether or not there was any reference to the fact that First Continental Mortgage Company of Miami owned the Class B stock of those Associations? A. Well, in the discussion I went quite into detail [3530] with Mr. Miller because I had understood that he had done corporate work.

I told him that, as attorney, I was anxious to close this loan. It also meant a lot to the community of Southern Maryland.

Congressman Boykin was anxious as well. So, in the discussion Mr. Miller inquired as to the makeup of the Associations as to the stock interest.

I told him that both First Continental and First Colony Class B stock was owned by First Continental Mortgage Company, that the A stock was owned by the shareholders of the two institutions.

We went then into discussions as to who owned First Continental Mortgage Company. I told him that, as far as I knew, it was the Edlin family.

At that juncture, Mr. Miller either suggested there was a solution or it did come out in the conversation. But the idea was advanced.

Q. By whom? A. Well, I may be mistaken but I certainly remember Mr. Miller saying that it could be solved by a voting trust, that if the Class B stock, which was owned by First Continental Mortgage Company, was placed in a voting trust, then the feeling that, and legally, there would be no question as to ownership by Mr. Edlin or the [3531] activities of either association, and I brought that out and called it to the attention of Mr. Robinson and I brought it to the attention of Mr. Edlin after the meeting.

Q. You told them of this suggestion? A. Yes.

Q. At that time had Mr. Edlin or Mr. Robinson gone to Florida to testify before the grand jury there? A. I think they had gone down, I may be mistaken either during—I think during June, if I am not mistaken, had voluntarily gone down and when they arrived, there was some mixup and they did not testify.

Q. They were not called? A. No.

Q. Now, when was your next visit with Mr. Miller? A. August 7, 1961.

Q. Do you have any recollection of that meeting? A. Undoubtedly—to the best of my recollection, because it could have been either this meeting or the one before, but it dealt with the visits of Mr. Robinson, and Mr. Edlin to Miami to appear before the Grand Jury.

It dealt with that, that they had been down and through a mixup they had not been called.

Q. Was anything else talked about at that meeting? A. Yes. At that meeting—I want to conclude on the [3532] other—that they did want Mr. Edlin and Mr. Robinson to go back again before the Grand Jury and asked whether or not I would contact Mr. Edlin and Mr. Robinson to ascertain if they would make another appearance.

Q. Who asked you to do that? A. Mr. Miller.

He stated that, if they would agree to go back, the necessary arrangements would be made.

Then at that meeting I recall another thing that was rather unusual. In talking with Mr. Miller, in which he so testified, he said "Congressman, I would like to discuss personally with you some of the features of the pending First Colony case as well as the Edlin matter; can you come over to my office either a weekend or late some afternoon at your convenience, when there would be no disturbance—just the two of us can discuss this case?"

And I made reference to whether Congressman Boykin should come along. He told me, no, just the two—that is just for me to come alone.

I made the reply that I would be happy to comply with his request.

Q. Now, what happened after that meeting? A. After that meeting the first opportunity I had to go was on August 24, I telephoned and told him that [3533] I would be available on the 24th late in the afternoon, that a weekend did not suit me because of the engagements I had in the

District, I made it a policy to be in the District on weekends.

Q. You mean your Eastern Shore District? A. Yes.

Q. What was the time of that meeting on August 24, was it in the late afternoon or not? A. At 5:28 p.m., approximately 5:30 in the afternoon.

Q. Now, tell the jury what happened at that meeting? A. At the meeting Mr. Miller had his file dealing with the pending cases. He began a discussion of the different counts in the indictment. He asked for a great many factual points.

I gave the best answers that I could. He stated that there had been a review of the case, that someone in his department—gave me his name—I do not recall, had looked over the case and that they felt, or this party felt that it was a good case. In other words, a case that the Government should go forward with.

Mr. Miller did not indicate that he took that position but continued to discuss on the merits of the case the different counts in the indictment. It dealt primarily with the question of false advertising, [3534] particularly as to a current dividend where the company was alleged to have advertised a current dividend.

The question was whether they had earned that dividend and whether it was misleading to the public.

That discussion continued for some period of time. Finally, I told Mr. Miller that many of the questions dealt with matters that I did not know about. One feature of the indictment which Mr. Miller has testified to, and I concur, dealt with the Cassell transaction, that is, the development in Southern Maryland, whether or not there was a washed out transaction at the time of the original loan.

Mr. Miller stated he had some understanding or he felt that the First Colony did not have on deposit in their account sufficient funds to honor the checks that were issued

originally on that loan, that it was a washed out transaction.

I told him I did not know; I would get what information I could and give that to him.

So after some discussion, I told Mr. Miller that I just did not know enough about the case, that there were attorneys representing these parties of record; I would suggest a conference with them and to have a further discussion with those attorneys, to which Mr. Miller said that "I think that is a good idea."

[3535] That closed the meeting on August 24th.

I may say further now, sir, there seemed to be an obsession in each of the meetings dealing with this Hoffa investigation. We got again into the Dranow matter.

He asked me what was being done in respect to the case that had been docketed for the return of the $100,000.

I told him depositions had been taken, particularly the principal, Mr. Marcus in New York.

Mr. Miller said, "Can I get a copy of that deposition?"

I told him I would get that for him, which later I did send him.

Q. Now, I show you what purports to be a copy of a letter from you to Mr. Miller of August 29, 1961 and ask you whether you wrote him that letter? A. I did write him and that is my original copy of the letter.

(Mr. Doub) I would like to offer it.

(The Clerk) Defendant Johnson's Exhibit 105 marked in evidence.

(Defendant Johnson's Exhibit 105 marked in evidence.)

(Mr. Doub) Members of the Jury, this letter is dated August 29, 1961, addressed to the Honorable [3536] Herbert J. Miller, Assistant Attorney General.

"Dear Jack:

"A copy of the depositions as requested will be delivered to you this week as some are now being typed in Baltimore.

"When those depositions are scheduled, I will so advise you.

"Incidentally, I followed through on the two phases which gave me some concern at our recent discussion. The enclosures are self-explanatory.

"I certainly enjoyed our time together on Thursday past.

"Sincerely,

"Thomas F. Johnson."

By Mr. Doub:

Q. Now, did you send him a copy of the depositions with this letter, or later—it says "a copy of the depositions requested will be delivered to you this week"? A. It was later, because they had to be typed and I had to get a copy from New York or Baltimore but it was sent on the Dranow matter.

Q. You did send that to Mr. Miller? A. Yes, sir.

Q. Now, the second paragraph reads:

[3537] "Incidentally, I followed through on the two phases which gave me some concern at our recent discussion. The enclosures are self-explanatory."

Now what were you talking about there and what were the enclosures? A. The enclosures were the bank statement of First Colony showing that on the date they issued their check to Mr. Cassell, or under the Cassell loan, that there were sufficient funds on hand to meet that check or obligation.

I think, also, there was a ledger sheet with it.

(Mr. Doub) I would like for the Government to produce those enclosures if you have them.

(Mr. Tydings) We do not. We made a search for them because we considered introducing that letter in our case and we could not find the enclosures. We know that they were sent and as Mr. Miller described them in his testimony, I think they were, as Mr. Johnson indicated, the photostats of the bank statements of the First Colony bank deposit in Bethesda, which indicated the exact bank balance on the day of the washout transaction so I think we are talking about the same thing but we do not have the photostats and we have made a search for them. If we had them we would have put them in.

(Mr. Genn) If the Court please, I am going to object to that as characterizing the testimony of a particular witness.

(The Court) What do you want me to do?

(Mr. Genn) Your Honor, I think a United States Attorney should be instructed not to comment upon the evidence. This is something that has persisted throughout this matter. There is no purpose in it. The testimony of the witness is the matter before the Court.

(The Court) I thought Mr. Tydings was trying to help Mr. Doub by conceding a point.

Mr. Tydings, I guess you had better keep quiet and let Mr. Doub prove his case the best way he can, if the objection is being made for that.

By Mr. Doub:

Q. Now, Mr. Johnson, was it your impression upon leaving that meetig with Mr. Miller on August 24, 1961, that Mr. Miller had finally and definitely determined to go forward with the prosecution of the Edlin case? A. I did not get that understanding.

Otherwise, I would not have carried on with the additional information.

Q. When was your next meeting with Mr. Miller? A. September 14, 1961.

Q. Who was present and what was its purpose?

(The Court) Before you get into that, if the rule is going to be—as Mr. Genn wants it to be—that Mr. Tydings is not to make any response, then I will expect all counsel for the defendants to observe the rule strictly in making requests on the Government to produce documents, and I think you do not want to do that. I suggest you talk it over at lunch among yourselves as to whether you want to have the informal way of asking the Government for documents that Mr. Doub has been doing without any criticism from anyone.

(Mr. Genn) Your Honor, I did not object to that. I objected to the characterization of the transaction by the United States Attorney. I have no objection to the comment with respect to trying to obtain documents. I am simply objecting to characterization of evidence that has been given by a witness. I think that was not an accurate statement of what I commented at all.

(The Court) No, but you cannot have the bitter without the sweet, or the sweet without the bitter. You want Mr. Tydings not to say anything, if that is so, then you observe the rule.

(Mr. Genn) I did not state that he should not say anything, Your Honor. Or we should not comment and try to hurry the matter along to get documents. It is just the additional fillips that are added to that particular statement that I object to. I would like to move this along just like everybody else would.

(The Court) All right.

[3540] By Mr. Doub:

Q. Mr. Johnson, what was the purpose of the meeting on September 14 with Mr. Miller? A. Mr. Doub, that meeting primarily was for the same thing that we discussed at

every meeting dealing with the Dranow matter as to Mr. Edlin and Mr. Robinson returning to Florida to testify in the Hoffa investigation.

Q. Now, why should there have been any problem as to that? A. When it developed that Mr. Edlin had been contacted, in response to the request of Mr. Miller, Congressman Boykin and myself had asked if they, Mr. Robinson and Mr. Edlin, would go back to Florida.

Mr. Edlin told us that he would not go back to Florida. We asked him why. He said there had been threats made against his life, not only as to his own life, but that of his wife, and I think that is the "barking dog" episode which Mr. Miller testified about that Mr. Edlin also felt that there was too much risk of Mr. Edlin returning to Florida.

[3541] Q. What did Mr. Miller say? A. Mr. Miller was, as always, so gracious and said that he felt that it should be investigated.

He wanted to know the ones that had made the threats. What the nature of the threats was; that he certainly would conduct an investigation.

Mr. Miller assured us that, if Mr. Edlin and Mr. Robinson would return, they would have adequate protection in Miami before the grand jury.

Q. Did you and Mr. Boykin report what Mr. Miller had said to Mr. Edlin? A. Yes, I may conclude that in the conversation, Mr. Miller thought it might be advisable to issue a summons for their appearance as I understand, or had issued one or was going to. I do not recall. I know one was issued, but we conveyed to Mr. Edlin and Mr. Robinson that they would be given protection and they agreed to go and did appear, as I was told.

Q. On what date? A. September 21, 1961, before the grand jury in Miami.

Q. Page 1690 of the transcript, Mr. Johnson, the Attorney General said that at his meeting on October 17 with Mr.

Boykin, they had discussed that Mr. Edlin was available and willing to testify, which suggests that he had not testified at that time. Does that statement of the Attorney General cause you to wish to change your testimony? A. Mr. Doub, Mr. Edlin and Mr. Robinson appeared on the 21st of September. I think what you allude to that the Attorney General, following the 21st of September meeting, was still interested in further information from Mr. Edlin and Mr. Robinson and spoke of a re-interview and also thanked Congressman Boykin for the great contribution that had been made to, in respect to Mr. Edlin and Mr. Robinson.

Q. Now, it is undisputed that you went to see Mr. Miller on Sept. 21, 1961 and I ask you whether the subject of discussion related to the Edlin case? A. To the best of my knowledge it did not, and if I am not mistaken, that was the meeting in which I had been told that Mr. Tydings had been spreading rumors as to Congressman Boykin and myself trying to put pressure on the Attorney General in regards to the Edlin case.

I had been before the Attorney General before. I felt that I should go before Mr. Miller. I made an appointment. I went to see him, and in the meeting I told Mr. Miller what was being said by Mr. Tydings or allegedly being said.

I told Mr. Miller that he certainly knew there was no favor asked at any time in respect to this case, only a request of a review on the merits. That we had always made it clear, we did not wish to interfere with the Department of Justice.

Mr. Miller replied, "of course you always made it clear."

Just like he did on the stand here in this Court. Then Mr. Miller voluntarily said, "I will call Mr. Tydings and straighten it out."

I did not ask Mr. Miller to call, but he told me at the meeting he would call Mr. Tydings and would straighten out such a false rumor if it were true.

So that meeting, I presume is the meeting—I may be confused as to what date, but I think that was the meeting of the Tydings episode in which nothing elese was discussed except a correction of a false alleged rumor.

Q. Now, thereafter did Mr. Miller tell you whether he had or had not telephoned Mr. Tydings? A. He did. I was very anxious because in politics you live an entirely different life. You are subject constantly to rumors and accusations and it was getting, of course—coming into an election year. I called Mr. Miller and I was told he had contacted Mr. Tydings and according to Mr. Miller, I think he told me that Mr. Tydings and, according to Mr. Miller, I think he told me that Mr. Tydings told him he had not made such a statement or something to that effect.

Q. Now, did you have any other meeting with Mr. Miller in 1961? A. I had the one and final meeting on October 16, 1961.

Q. Who was present? A. Congressman Boykin and myself at 5:30 in the afternoon.

Q. What did Mr. Miller tell you at that meeting? A. The purpose was to determine whether there had been a final disposition of this case.

I had been informed by Mr. Robinson that Mr. Miller had had conferences with certain attorneys in respect to the Edlin case, the First Colony and we wanted to know, or I wanted to know whether there had been a final determination of this matter. Still the loan was pending, still there was a problem. In the meantime we had several New York interests, prior to that who wanted—

Q. What did Mr. Miller say at that meeting—had he made a fiinal decision? A. Mr. Miller told us at that meeting that there had been a final determination, they felt they had a strong case and they would go forward.

Q. Now, after Mr. Miller told you that, did you ever see him again in 1961? A. I did not.

Q. Now, Mr. Miller's telephone records indicate that there was a call to Mr. Miller from you in the late afternoon on October 23. What was the purpose of that call? A. October 23, I think the call was made at 5:30. That was the day before I was leaving with the Foreign Affairs Committee to be gone for the remainder of the year. I called Mr. Miller to say "Good-bye," that I was leaving. I also called many other friends in the various departments to also say, I am departing from Washington, and I left the next morning at 8 a.m.

Q. In the course of your two meetings with the Attorney General, and your later meetings with Mr. Miller, did you make any misrepresentations of any kind to them? A. No.

Q. Did you or Mr. Boykin say anything in those meetings which you deem to be improper, an impropriety? A. We did not.

Q. Did you ask for any special favors of the Attorney General or Mr. Miller? A. We did not other than asking that the case be reviewed on its merits.

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[Tr. 3555]

By Mr. Doub:

Q. I will ask you this question, Mr. Johnson. At most of these meetings which you had with Mr. Miller, was most of the time spent talking about the Edlin First Colony case? A. I would say not. I would say that more time was spent in respect to what we term the Dranow matter, in respect to the investigation dealing with James Hoffa.

Q. Now, were you compensated by Mr. Edlin, First Colony, First Continental or by anyone else, for your visits to the Department of Justice? A. Absolutely not, not by any of those or anyone else.

Q. Did anyone promise you any compensation with respect to any one or all of these visits, Mr. Johnson? A. No one promised me for any one or all of the visits.

Q. Did anyone suggest to you that you would receive any personal benefit or advantage if you made those visits? A. They did not.

Q. Did you, in fact, Mr. Johnson, benefit directly or indirectly from those visits to Justice? A. I did not.

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[Tr. 3558-3560]

Q. Mr. Johnson, did you enter into an agreement or conspiracy on or about April 1, 1960, with Mr. Edlin and Mr. Robinson or either of them to defraud the United States of any of its rights of any kind? A. Absolutely not.

Q. Did you enter into an agreement with Mr. Edlin and Mr. Robinson or either of them at any time to defraud the United States of its rights? A. Absolutely not at any time.

Q. Did you enter into such an agreement with Mr. Edlin and Mr. Robinson and Mr. Boykin for such a purpose at any time? A. I did not, and it seems as ridiculous as the others.

Q. Did you enter into an agreement at any time with Mr. Edlin and Mr. Robinson or either of them to assist them in connection with any alleged vendetta between State savings and loan associations and Federal savings and loan associations? A. I did not.

Q. Did you agree with Mr. Edlin or Mr. Robinson or with anyone else to make the speech of June 30, 1960, for compensation? A. I positively did not.

Q. Did you agree with Mr. Edlin or Mr. Robinson or either of them that—well, strike that.

Did Mr. Edlin or Mr. Robinson or both of them or anyone else promise you any personal benefit if you would make that speech of June 30, 1960? A. They did not, either one of them.

Q. Were any of the checks which you have testified you received in this case paid to you in connection with your

visits to the Department of Justice? A. Not one check. Not one penny was paid for that purpose.

Q. Was any part of any check given to you for such a purpose? A. Not one part.

Q. Was your office building in Snow Hill leased by you to First Continental to neable you to receive a concealed payment from First Continental of $800? A. Absolutely not, and like the others, as to alleged concealment, here is a building with two sides, large signs on the building, a telephone put in the building. A branch office was listed on the company's stationery to be distributed. There was an employee to be taken to be trained.

Q. Did you receive the checks in evidence from Mr. Robinson in order to conceal the fact that you were doing legal work for the savings and loan association? A. I did not, and it is just ridiculous, because the larger checks were from the First Continental Savings and Loan Association in respect to the Charles County and Leisure City escrow account.

Q. Did you conceal from a partner that you had received these checks for legal services that are in evidence?A. The first thing, I had no partner in Snow Hill. I did not conceal. Mr. Lankford was on the stand under oath and stated how ridiculous such statement or assumption was.

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(Vol. 30):

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(Vol. 31 [3869]) By Mr. Marion:

Q. Congressman, I show you what purports to be a two page letter with two attachments, apparently on your stationery to the Honorable Thomas B. Finan and ask you if that is your signature on page 2?

(Mr. Doub) What is the date of that?

(Mr. Marion) It bears the date of January 10, 1962.

[3870] A. Yes, that is my signature.

(Mr. Marion) Now, if Your Honor, please, I wish to offer this in evidence.

(The Court) Mr. Genn, it seems to be a fairly long letter. Perhaps you and Mr. Robinson can read it together, as Mr. Williams and Mr. Doub have been reading it together.

(Mr. Genn) May I approach the Bench, please?

(The Court) Do you wish to object to it?

(Mr. Genn) Yes.

(The Court) All right.

(At the Bench.)

(The Court) What is your objection?

(Mr. Genn) I object, Your Honor. I think this gets into—first of all, I do not know the relevancy of what, is this attached transcript supposed to be of a hearing before Mr. Sears, and it has been my feeling that the Government has consistently been getting into what Your Honor stated was not going to be an issue in this case and that is the savings and loan situation. I think he could testify without the document.

(The Court) What is the objection?

(Mr. Genn) I think it is prejudicial.

[3871] (The Court) To your client?

(Mr. Genn) Yes.

(Mr. Robinson) I would like to call this to the Court's attention.

(Mr. Genn) I do not think it is sufficiently material to be admitted in evidence for this purpose, either, Your Honor. I think it is prejudicial.

(The Court) You have not heard the purpose for which it is being offered.

(Mr. Genn) They just offered it in evidence.

(The Court) It is offered to contradict—is it not?

(Mr. Tydings) He told another story to the Attorney General and another story to the Grand Jury.

* * * * * *

[3872] (In open court.)

(The Court) The Court will admit the letter as against the defendants Johnson and Boykin only [3873] since I understand neither of them made any objection to the letter. The letter will not be admitted in evidence against either Edlin or Robinson.

I instruct the Government not to read again the letter of July 1, 1960 which was attached to the letter from Mr. Johnson to Mr. Finan but merely to note that a letter, which is exhibit so-and-so and already read to the jury, was attached to the letter and I particularly instruct the jury that the Court is admitting the portion of what is called "A transcript of Hearing," Page 17, which is an exhibit or an attachment to the letter from Mr. Johnson, not to prove the truth of anything stated in the transcript which I believe the parties have agreed was a statement made by an assistant attorney general of the State of Maryland. This statement is not being admitted and you are not to consider it as proof of any fact contained in the statement of the Attorney General but merely so that you may understand what it was that called for or that produced the letter from Mr. Johnson to Mr. Finan which is being admitted in evidence.

With those limitations, the documents may be marked Government Exhibit 175.

(The Clerk) Government Exhibit 175 marked in evidence.

[3874] (Government Exhibit 175 is admitted in evidence.)

(Mr. Marion) Members of the Jury, the portion of the transcript of hearing which is enclosed as an attachment to the letter reads as follows:

"Now, if Your Honor please, we also find that Mr. Edlin, having had certain legal difficulties, has seen fit to use the Association's sums and funds to pay for his legal expenses and we are able to show that the Association has so far in 1961 on, an account called 'Legal Services—Special,' paid out a sum of $61,488.

"Now, part of that money, Your Honor, has been paid to a gentleman named Mr. Robinson who we have just advised you is a vice president of this association, and in addition, certain of these sums have been paid to a firm of Johnson & Johnson, to L. Caudle, Lamar Caudle, and others who have serviced Mr. Edlin."

Now, the letter is on the letterhead of the Congress of the United States, House of Representatives, letterhead of Thomas F. Johnson. It is addressed to the Honorable Thomas B. Finan, State Law Department, Mathieson Building, Baltimore, Maryland.

[3875] "Dear Tom:

"I cannot tell you how unjust and incorrect were the remarks of your office at the recent hearing in Montgomery County, dealing with the First Continental Savings and Loan Association. Attached is a copy of that portion of the transcript which by innuendo my firm is supposed, in some vague way, to have been engaged in some nefarious dealing with the association and especially with one J. Kenneth Edlin.

"I personally entered the picture of this entire situation at the request of my good friend and colleague, Congressman Frank Boykin. In connection with his real estate holdings, comprising some 13,000 acres, my firm and other legal associates were engaged to assist in some of the complex legal ramifications. Suffice to say, my firm acted as counsel for two land corporations which had been founded

through the law office. For the work performed over a period of time, the law firm of course received nominal legal fees, and by communications in our files, these fees together with engineering and other costs, were to be paid from an escrow account at First Continental secured by a first mortgage on portions of the real estate. As I found the legal work required of my firm consumed more time [3876] than I could spare from my Congressional duties, I turned over a large portion of the work to attorneys in Virginia and Maryland, compensating them from the fees that had been paid my firm from the escrow accounts. Knowing that the subject matter is a political football in our State, certainly, you should have contacted me, as you must have known there was a proper explanation.

"Then next, the uncalled publicity emanating from our Insurance Commissioner, Mr. Sears, should have told the press that the one or two meetings I had with him were perhaps a year or more ago, and that the case had been referred to our office by a Chicago attorney. He should have further stated that when he advised that the Life Company in Illinois could not qualify under the grandfather clause, I so notified clients and the matter was closed. The one or two conferences with the Commissioner were the beginning and the ending of the entire transaction, and no fee ever received.

"Naturally, the situation greatly disturbed me, and I have no choice but to take the case directly to the people. At an early date I hope to have television time, as I feel the people of the Eastern [3877] Shore are entitled to know the precise circumstances under which I had any dealings with the parties mentioned. You may be assured that on these radio talks and television speeches and other releases, I shall continue to fight as a loyal Democrat.

"With kind personal regards, I am

"Sincerely yours,

"Tom"

/s/

"Thomas F. Johnson, M.C."

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(Vol. 32 [4053]) Q. Congressman, now you testified on direct examination, as I understand, and you correct me if I am wrong, that your original purpose of going to see the Attorney General in March of 1961 was to enable him to review the First Colony case on its merits to determine whether the case had merit or not? A. Basically, that is true.

Q. And is it not a fact that when you were first interviewed by the FBI on January 10, 1962, that you told the FBI agents who interviewed you that the First Colony mail fraud case was never discussed with the Attorney General at the time of your visit on March 25? A. If I did, it was not correct.

Q. You would not deny that you told them? A. No, but, as I say, if I did, it was not correct.

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[4054] By Mr. Marion:

Q. Did you testify as follows on September 25, 1962 before the Federal Grand Jury, beginning on page 79:

"Q. What would you say was the purpose of your going to see the Attorney General, the real purpose? A. To look into the whole matter and investigate.

[4055] "Q. Look into the whole matter of what? A. First whether or not the reports that Justice had were correct reports on Edlin.

"Q. On Edlin? A. Yes. Whether or not he had—which we had a copy there of two previous convictions instead of one in connection with some savings and loans in Chicago. I believe the Corona, which was a bad report. How serious the present situation was, and whether or not these were matters that should prevent FHA from proceeding with the approval of the lending institution, and particularly, whether or not Mr. Edlin was connected with First Continental. May I say at this point, Mr. Edlin, of course, always made an issue that there was some pressure group preventing him and had means of preventing him from this development there and we, frankly, asked and explained on that, whether or not there had been any outside interference.

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[4074] Q. Was it correct that you did not tell the Attorney General whom you represented? [4075] A. I told the Attorney General that I was representing through Mr. Robinson the lending institutions. That was First Continental and First Colony. Later I confirmed by letter of March 25th that First Colony was the lending institution.

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A. I told him that I was interested as attorney for the lending institutions; that I wanted to help Maryland. It meant a lot to Maryland, and furthermore, that we had been told that there was merit to the request for the review.

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[4076] Q. Let me ask you if you testified as follows before the Federal Grand Jury, beginning on page 73:

"Q. There came a time in 1961 when you either alone or accompanied by Congressman Boykin or Mr. Robinson had occasion to visit the Department of Justice, is that right? A. There was.

"Q. And will you explain to the jury the circumstances of that? A. Yes. I am very happy to. One, and perhaps the main problem to arise at the time of the loan negotiation, we have gone into the Desser & Garfield, where they were asked, they were to borrow money for this development from First Continental. The problem arose to secure FHA approval. I may say that land planning [4077] and site location had to be approved by FHA, but more important was approval of the lending institution. In this case it was First Continental Savings and Loan Association, and without such approval, why, any development, of course, in this case was virtually hopeless. Congressman Boykin thought that there would be no difficulty in respect to FHA. He suggested—and I am referring to notes which I have here on it—that a Mr. Prince, a gentleman I think I have met—I don't know him too well—and another gentleman whose name I do not recall, attend to the securing of the approval of FHA.

"Congressman Boykin later told me that FHA just would not approve First Continental Savings and Loan, as it was not under State regulation. After further inquiry it seemed that the real objection was a bad report on Mr. Kenneth Edlin as to pending violations, past violations, and that he was connected with First Continental Savings and Loan Association.

"Q. At this time did you realize Mr. Edlin was under indictment? A. I think we at this time probably had gotten to that when we got that report there on that.

"Q. This was approximately in March of 1961, approximately March?

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[4144] CROSS EXAMINATION

By Mr. Genn:

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[4145] Q. Now, you indicated, I believe, that you informed both in your memorandum to the Attorney General and directly in the conversation that you were acting as an attorney when you made those visits, is that correct, to the Department of Justice? A. That is correct.

Q. Did you so inform Mr. Edlin that you did act in that capacity and told Mr. Edlin that that was the capacity in which you acted when you made the visits? A. I told Mr. Edlin at all times that I was not representing him. I had made known as to my representation of First Colony through Mr. Robinson. Also, on one occasion Mr. Miller asked what interest I had in Charles County. I think I related to Mr. Edlin and Mr. Robinson both that I replied that I was an attorney.

Q. And you did indicate to them in other words, that you told the Department of Justice and the Attorney General that you were there as an attorney. You did not refer, of course, specifically as an attorney for Mr. Edlin, is that correct? A. Yes.

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[TR 4168-4169]

WILLIAM L. ROBINSON

DIRECT EXAMINATION

By Mr. Doub:

Q. Mr. Robinson, you are a defendant in this case? A. Yes.

Q. Where is your residence? A. Miami, Florida.

Q. Where were you educated? A. In Miami, Florida, with the exception of one year at the Citadel at Charleston, South Carolina.

Q. Did you go to college? A. I did, sir.

Q. Where? A. University of Miami for my law degree, and the majority of my undergraduate work. And, as I said, one year at the Citadel at Charleston, South Carolina.

Q. You have been admitted to the bar of what state or states? A. To the bar of Florida, of course. The Federal District Court in Florida; the Court of Appeals and the Federal Court for the 5th Circuit, and the District Court here in Baltimore.

Q. What year were you admitted to the bar? A. 1949, sir.

Q. Have you practiced law since that time? A. I have, sir.

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[TR 4173-4178]

Q. Did there come a time when you became counsel for First Continental Mortgage Company of Miami? A. Yes, sir. First Continental Mortgage Corporation is the correct title.

Q. When was that? A. I had had some relationship with that corporation, I believe, as early as 1958, but a close relationship began in approximately November of 1959.

Q. Did there come a time when you became also general counsel of First Colony Savings and Loan Association? A. Yes, sir. I would say that I started serving First Colony actually in late November of 1959. Early in 1960 I would say my position was such that I was general counsel for the corporation.

Q. Now, when did you first have a connection with First Continental Savings and Loan Association? A. A little later in 1960. The Corporation commenced business on, I believe, the 12th day of May, 1960, is my best recollection, and I participated in some of the activities leading to its opening. Probably commencing in early April of 1960, and

I would say that I was just general counsel from the day it commenced business.

Q. Now, from May, 1960 to the end of 1962, were you the general counsel of these two savings and loan associations—in fact, all three companies? A. Yes.

Q. You were? A. Yes.

Q. When did you first meet Mr. Johnson? A. I am not absolutely certain. I can not remember whether my first trips to Washington were in December, 1959, or whether they commenced in January of 1960. My first contact with Mr. Johnson had to do with a proposed loan from First Continental Mortgage for the construction of a bridge on an area as best I can recall, Assateague Bay, I believe is the correct pronunciation. I referred to correspondence, and I am sure my correspondence in that it is dated very early in 1960, is correct.

These negotiations in regard to that as a matter of fact, spread over a substantial period of time and prior to preparation for this trial and examination of my correspondence, my best recollection had been that it was around July, which was when we completed those negotiations but they actually extended for a substantial period of time.

Q. You mean July, 1960? A. Yes.

Q. And when you say "completed," do you mean terminated—the negotiations? A. I mean terminated, yes.

Q. In other words, they failed? A. That is correct, sir. I am not sure. That was completely clear, sir. I may have gone too far. I met Mr. Johnson at the very beginning of those negotiations. My first contact in regard to the Assateague Bay was at a meeting with Mr. Johnson and a Mr. Diggs and also with Mr. Edlin.

Q. When did you first meet Mr. Boykin? A. January of 1961. I cannot give you the exact date. My best recollection would be that I personally met Mr. Boykin about the middle of January.

Q. Now, I believe that some Government witness testified that you were present at a luncheon at the Congressional Hotel, which was attended by Mr. Marshall Diggs and Mr. Edlin and Mr. Johnson, and perhaps Mr. Rains—I am not sure. Did you attend such a luncheon?

(Mr. Tydings) If Your Honor please, I would like to object to that question. No. 1, I do not think it suggests an answer, and I do not think the answer is factual.

I think Mr. Doub had better check his testimony on what witness and what he said.

(Mr. Doub) I will withdraw the question and just ask him this.

(Mr. Tydings) If you will tell us which witness, and when he said it, we will check it for you but that is not my recollection and I just wanted to make sure.

(Mr. Doub) I thought someone had testified to that.

By Mr. Doub:

Q. Were you present at a luncheon in May of 1960 at the Congressional Hotel which was attended, among others, by a Mr. Heflin, Mr. Edlin and Mr. Marshall Diggs and Mr. Johnson? A. No, I was not. At the time of that meeting I cannot recite the date now, but the subject matter has come up before with me. At that particular time I was in Hartford, Connecticut, negotiating the settlement of a domestic relations case.

Q. Now, it is undisputed that on June 30, 1960, Mr. Johnson made a speech upon the floor of the House of Representatives or inserted the speech in the Congressional Record which has the same effect, and I ask you this question: Will you state whether or not you requested Mr. Johnson to make that speech? A. No, I did not.

Q. Did you ever discuss that speech with Mr. Johnson before he made it? A. My best recollection is that I did not, sir, but I am not absolutely certain for the reason that I heard Mr. Heflin's testimony. He testified—and I

am sure that it was to the best of his knowledge, truthfully, that I went with him to a Mr. Johnson's office in regard to delivering some materials. I, frankly, do not remember such an occasion but I would not want to deny that it happened.

Q. Now, let me ask you this. Did you ever send, deliver or mail to Mr. Johnson or to Mr. Buarque, his Administrative Assistant, or to any one in his office, any drafts of a speech? A. No, sir.

Q. Did you ever do that with respect to any materials for incorporation in a speech? A. I am sure I never mailed any, sir. In view of Mr. Heflin's testimony, I am not absolutely positive that I was never a party to anything there. But I am sure I did not send anybody mail, sir.

Q. Did you ever hear from Mr. Edlin that Mr. Johnson was compensated for making that speech? A. No, sir.

Q. Will you state whether or not you ever told Mr. Johnson that you had been reimbursed for the $500 contribution which you made to Mr. Johnson's campaign and which went to him, to his political treasurer's account? A. I never had any occasion to discuss it with him, sir.

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[4179] Q. When was the first time that you had any discussion with Mr. Johnson as to Mr. Johnson rendering any legal services in association with you? A. Some time in the month of August. Once again, I can't pin this down to a specific day, but I would say it was in the latter part of August, maybe something like the 20th or thereabouts. I don't know the exact date.

Q. Well, now, will you tell the jury just what conversation you had with Mr. Johnson at that time? A. Well, at that time I had gone to Mr. Johnson's office. I was seeking and desired to have associated with me a Maryland attorney, other than the attorney I was at that time dealing with or at that time maintained a relationship with.

I had previously, of course, met Mr. Johnson. I had gone through several months of negotiation with him in regard to the matter in which he was interested, the bridge matter. I explained to him that I represented several corporations. I explained to him some of them were in Maryland; that some of them were in Illinois; that some of the interests that I would be representing would be in New York and others from Miami.

He was, of course, familiar with First Continental Mortgage Corporation. We had discussed that at length at one time or another, I am sure, during our negotiations.

[4180] He explained to me that while he was continuing to practice law while he was in Congress, that nevertheless his Congressional duties were his primary obligation, and that he was not inclined to accept legal responsibility where it was going to require any substantial period of time out of his office; that he had to work primarily with matters where he could operate in a supervisory capacity or in the capacity of approving or disapproving actions, but that he was not in a position to participate in protracted hearings or meetings away from his office other than occasionaly during the evening or possibly on weekends.

I told him that I was acting as general counsel for the various interests, and that this type of relationship would be highly satisfactory to me; that what I primarily wanted was someone who could take over the matters that I was dealing with and check them against Maryland law and assure me that I wasn't violating what might be situations under Maryland law which would be contrary to Florida law and things with which I wouldn't be familiar, and from time to time, why, quite a few of those arose.

The Congressman told me that under those circumstances he would be glad to accept the position. I believe that at that period of time we discussed merely in passing. I don't think I was seeking any legal opinion. I believe that we discussed in passing a loan that was then in process, [4181] the Engineering & Development loan.

I talked to him about some of the facets of it as a form of background to give him the type of matters that we would be interested in.

I don't believe—my best recollection is—that I sought any assistance from him at that time or any advice regarding that particular loan at that time. The meeting ended on a mutually satisfactory basis. That is, he was willing to undertake the work, and I was very pleased to have him do so.

Q. Now, before you had that conversation with Mr. Johnson, state whether or not you had any discussion of this matter with Mr. Edlin, and if so, when and what was its content? A. I did, sir. It would either have been the same day or very possibly it might have been the day before. I had for some period of time been complaining to Mr. Edlin that I could not get along too well with the counsel we were working with. The man and I had a very strong personality clash, and I didn't enjoy working with him. I dreaded going to his office, quite frankly, and I had complained, and in this period of time I had been complaining to Mr. Edlin, and this particular date had complained. And he had turned to me and said, "Well, you have been working with Mr. Johnson? What do you think of him as a lawyer? [4182] Do you think you could work with him."

I told him, frankly I liked the man very much. He seemed to be quite competent, and I would like to work with him, and since my activities were mostly in Washington and his office was in Washington, it seemed very practical.

As a result of that meeting, I went to see Mr. Johnson for the purpose of seeing if he would accept the work.

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[4185] Q. Was there any problem at that time about the liabilities of endorsers on a note that bore an interest rate in excess of six percent, and if so, was that discussed at

[4186] that time or later on? A. It certainly was discussed. * * *

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Q. Will you just give us an idea as to what the subject of that discussion was? A. I am not absolutely certain how it arose. It is my best recollection that Mr. Edlin asked me particularly to confer with Mr. Johnson on that matter. Now, I might be in error as to the manner in which it arose. The question specifically was whether or not under Maryland law an individual guarantor could guarantee a loan which called for interest by a corporation in excess of the rates that were applicable to the individuals.

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(Vol. 33 [4261]) Now, it is undisputed that Mr. Johnson, after March 1, was in Miami and will you tell the jury what you discussed with Mr. Johnson when he was in Miami on that occasion? A. There were several matters here, sir. If I am going to cover those discussions, Mr. Doub, this was a continuation of some earlier discussions that will possibly make the conference in Miami more understandable, if I may go back a ways.

Q. Go ahead. A. All right, sir.

In this regard, some time late in February, Mr. Edlin came to me and stated that Mr. Johnson had asked him to come see him, and that he had talked to Mr. Johnson and that Mr. Johnson had at that time been advised that Mr. Edlin was then under indictment, and that Mr. Johnson had asked him, would he give him the details in regard to that indictment.

Mr. Edlin said that he spoke to him in some general terms but said that since Mr. Johnson was a lawyer and I was a lawyer, that I was fully familiar with the case, and he would prefer that Mr. Johnson discuss it with me.

[4262] He stated that Mr. Johnson said that he would appreciate my coming as soon as possible. He asked me to go see Mr. Johnson at that time and I did at that time,

except to this extent. I am not absolutely positive whether Mr. Edlin came to me in the late afternoon and I saw Mr. Johnson the following morning, or whether he came to me in the morning and I saw him the afternoon of the same day.

I saw Mr. Johnson at his office during the normal hours, so I went to his office at the first opportunity after Mr. Edlin had asked me to do so. At that time I explained in general terms to Mr. Johnson the basic charges in the indictment. I told him why I did not believe that Mr. Edlin or the other parties mentioned in the indictment were guilty of the crime with which they were charged.

I further advised him at that time that I very strongly felt and believed as I did, that these charges had resulted from very strong efforts and pressures, instituted by various competitors of his through the efforts of an organization known as The United States Savings and Loan League.

I particularly mentioned to him that, at that time, the correspondence between a Mr. Bridges and a Mr. Slipher. Mr. Slipher was the permanent representative [4263] in Washington, D. C. of the United States Savings and Loan League.

Mr. Johnson wished to inspect the indictment. I told him that I did not have a copy with me in Washington, that all of my work in regard to that case I had been doing so far as my own personal efforts were concerned, in Miami, and all of my papers in that regard were in Miami. On my next trip to Miami, which was coming up very shortly, I would bring these papers back for his inspection.

At this time Mr. Johnson advised me that he expected to be in Miami for a few days very shortly, himself, and that, if he should come to Miami before I was back in Washington, he was most anxious to go thoroughly into this matter and he would appreciate my making a copy of the indictment available to him at that time.

Very shortly after his conference, I think it was a matter of days, I traveled to Miami. We were, of course, still in the middle of the Desser and Garfield negotiations, and under the impression that Mr. Johnson was coming to Miami, I wrote this letter that you gave me—being Johnson Exhibit 69, telling him that I was in Miami and would like to see him when he came down.

When Mr. Johnson came to Miami, he did come to my office. I had a recollection of my father, who is also an attorney, and has as office on the same floor—I recall [4264] taking him down there.

I cannot remember now whether my father was in or whether I showed him my father's suite. We went into my office. I sent my secretary out for coffee for the two of us at that time. I gave Mr. Johnson a copy of the indictment. I believe I also gave him a copy of a statement of facts that had been prepared by Mr. Edlin giving his recollection of all the events that occurred, leading to this particular indictment.

I gave him a memorandum that I had previously prepared. I do not believe it was a very lengthy one. It had to do with particularly Mr. Bridges. It had been prepared at a time when Mr. Bridges was threatening to sue Mr. Edlin claiming a 20 per cent interest in First Continental Mortgage Corporation.

I again discussed with him certain correspondence of Mr. Bridges which was not in my possession, threats which Mr. Bridges had made against people who were on the Board of Directors of First Colony at the time of these threats. A letter, I do not remember now whether it was a letter from Mr. Bridges to Mr. Slipher or a letter from Mr. Slipher to Mr. Bridges, and a letter from Mr. Bridges threatening Mr. Edlin that he was going to have criminal charges brought if Mr. Edlin did not pay him a sum of money. I think it was $10,000.

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[4317] Q. Now, when was it that Mr. Johnson stopped rendering any real legal services to the land companies? A. I think his major services were pretty much over by the—I guess about August or thereabouts. Sometime along in there.

I cannot pin that down to a particular date. There was not a substantial amount of work done after the execution of these papers in August when we recorded the final documents and so forth on these transactions.

It does seem to me that the acquisition of an additional piece of property in Charles County, Maryland, I believe, was subsequent to that date but I could be in error on that.

Q. Now, were there any discussions that summer of 1961, with Kadder Corporation and Sayre & Fisher as potential buyers of the stock of the land companies? A. Yes, sir, there was a series of negotiations with three different companies. There was the Sayre-Fisher Corporation Group which I think was the first company we negotiated with. Sayre-Fisher, to my recollection, was in an out. That is, I believe that our first negotiations were with Sayre-Fisher, that then after that there were negotiations with Bruce Lumber and with a corporation [4318] known as Kadder Corporation and ultimately there were negotiations again with the Sayre-Fisher Company.

(The Court) You say these dealt with purchase of stock in the land company?

(The Witness) These all dealt with the sale of the stock of the Charles County Corporation and Leisure City Corporation.

(The Court) Who owned the stock of Charles County Land Company?

(The Witness) That was in International Electronics. I do not remember the actual name. It was International Electronics and Oil Corporation, I believe.

Q. (The Court) Who was International Electronics?

You mentioned a little while ago until I think you said "we purchased the mortgage" and "we" was Charles County Land—"until we acquired title to the mortgage." Now, "we" was Charles County Land Company. A. That is correct.

(The Court) Now, was "We"—you were talking about yourself and Mr. Edlin? Did you and Mr. Edlin own the International?

(The Witness) No, Your Honor. It may be unfortunate. I do not think I am the only attorney that indulges in that. But, unfortunately, when I speak of clients in any matter, I say "we." It is perhaps not [4319] correct and not proper.

When I speak on a matter that I handle for a client, I say "We did it." It does not mean I am a party to the transaction, no, sir.

(The Court) There seems to have been a good many transactions here in which Charles County Land Company and International are in that—I mean First Continental and First Colony, and the land companies, one or another of them, and the thing that is not clear to me it whether the ownership of Charles County Land Company was substantially the same as the ownership of First Continental Mortgage Company, which, I believe is the company that owned the stock in, the voting stock, in the two savings and loan associations. Were they owned by the same—were First Continental Mortgage and the owners of Charles County Land Company, substantially the same?

(The Witness) Mr. Edlin had stated to me and to Mr. Johnson, Mr. Lykes Boykin and others that in regard to Charles County and Leisure, that he was the spokesman for a syndicate of investors who generally dealt through corporations and that they all had full confidence in him, that he was authorized to speak for them, and he through these negotiations spoke for them and set forth the terms and conditions upon which these people would be satisfied.

[4320] (The Court) Well, it is going to be necessary in various matters in this case for the jury, it seems to me, at some time or another to know whether the interests of the voting stockholders of First Continental and First Colony, which I believe was First Continental Mortgage Company by agreement of everyone, now, whether that interest was substantially the same as the interest of (1), Charles County Land Company and, secondly, Leisure City Land Company.

Now, you say you do not know. Is that it, you do not know who really owned those companies, who the beneficial interest of those companies resided in?

(The Witness) I told you exactly what I knew, Your Honor, that Mr. Edlin stated that he was representing a group of investors from various cities and that they were the parties principal to Charles County and Leisure City. It was my impression that the same group that was referred to in Charles County was also being referred to in Leisure.

I certainly knew that First Continental Mortgage Corporation was not owned by a syndicate or group. But I was not acquainted with nor was I advised, nor did I ever meet any members of this syndicate.

(The Court) Then, it is my understanding that, to the best of your knowledge, the beneficial ownership of [4321] Charles County Land Company and Leisure City Land Company was not the same as the beneficial ownership of First Continental Mortgage Company and, therefore, through them, of the Association.

Now, is that what I gather from your testimony in this case?

(The Witness) Your Honor, I do not believe I have any actual knowledge in that area to where I could confirm or deny that, sir.

(The Court) Your answer is, you do not know whether they were the same or not?

(The Witness) I do not know who they were in Charles County and Leisure City.

(The Court) You do not know whether they were the same, or not, and you do not pretend to give the jury or the Court any impression one way or the other as to whether they were the same or different?

(The Witness) No, sir.

(The Court) Because that may make a difference in many aspects that we were talking about at the bench at one time.

By Mr. Doub:

Q. Did Mr. Edlin ever tell you, or tell Mr. Johnson in your presence, the names of the investors who owned the stock of the Land Companies? A. [4322] Never in full, sir. He mentioned from time to time three or maybe four persons whom we knew of that he said were part of the group. He never exposed or disclosed the entire group, sir.

Q. Was that to you, or was that to Johnson in your presence? A. I would say it was to Johnson in my presence. I would say Mr. Lykes Boykin was probably present, also.

Q. And what names did he give? A. Mr. Vincent Albano, associated with a bank in New York. I am not certain of this. I know he mentioned him on other occasions. I think he mentioned a Mr. Harold Green who was associated with a bank in Chicago. I believe that—and I am just not sure of this at all—I think Mr. McKeldin might have been there. I do not mean McKeldin. I have been reading your papers here. Mr. McDaniel, I think was mentioned.

(The Court) Now, do you know who were the owners of First Continental Mortgage Company?

(The Witness) I am sorry. I did not hear the question.

(The Court) Do you know who were the principal owners of First Continental Mortgage?

(The Witness) Mrs. Edlin held the majority, if not all of the stock in that corporation, sir.

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[4328] Mr. Doub, may I suggest that you let me go back a little before this? It is getting premature.

By Mr. Doub:

Q. All right, go back before that. A. This morning, if you will recall, Mr. Doub, I testified to my conference in February with Mr. Johnson regarding the indictment, and my later delivery to him in early March of a copy of the indictment, and at that point we went over to another subject.

Q. Yes. A. Immediately after the delivery in Miami to Mr. Johnson of the indictment, and various papers, as I testified, I returned to Washington and Mr. Edlin and I went to see Mr. Johnson for the purpose of discussing with him the indictment after he had had a chance to read it.

At this conference I discussed with Mr. Johnson the [4329] indictment which now he had read, paragraph by paragraph. I explained to him in detail what I believed were our legal rights and where I believed that the Government was being highly technical and unreasonable.

Further, I gave him all of the information that I had collected, or had or knew or had been told in regard to the factual situations and the factual answers to various charges in that indictment.

I would say that this conference lasted for two or more hours and during this time, Mr. Edlin, of course, interjected himself several times into the conference to explain some things to Mr. Johnson.

When the meeting was concluded, I felt that Mr. Johnson was satisfied. That my position was correct, that we did have an extremely strong defense to that charge, and that there had been undue, improper pressure in obtaining

the charge, and that it was not a good-faith prosecution for criminal acts.

When we had completed this meeting, Mr. Johnson advised me that Mr. Boykin, also, wanted an explanation of this matter and suggested that we go see Mr. Boykin at that time.

I believe Mr. Johnson made the call to see whether he was available. In any event, the three of us, Mr. Johnson, Mr. Edlin and myself, then went down to— [4330] not down to, but up to Mr. Boykin's office.

Mr. Johnson advised Mr. Boykin that he had been over this indictment thoroughly with me, and he felt he understood the facts and background. He did not feel, he said, that he or Mr. Boykin need be concerned with the fact that Mr. Edlin was involved in this indictment.

Then he suggested that I give Frank some of the explanation that I had given him. I then proceeded to explain to Mr. Boykin many of the items in the indictment. I did not attempt to give him as lengthy a discussion as I had Mr. Johnson. I thought there were many things that two lawyers could talk about and understood that would be of no interest to Mr. Boykin.

I believe I was very persuasive. I was saying things with which I had the greatest of confidence, which I certainly believed myself, and I was certain when I completed, Mr. Boykin was likewise convinced that this was not a matter of grave concern.

At the conclusion of these discussions in Mr. Boykin's office, either he or Mr. Johnson—I can not recall which—made this statement: "It seems to me that if this is the situation, it ought to be something for review by the Department of Justice." There was not at that time, an offer to go or an [4331] agreement to go to the Department of Justice. The subject was raised there by this discussion and this suggestion that this seemed to be something that ought to be reviewed by the Department of Justice.

Mr. Edlin made the statement that this was the kind of thing that he had always wanted. He reiterated again his innocence, his confidence in his innocence and his ability to prove it and that he looked forward to an opportunity to have some fair or impartial person review that case.

The meeting broke up shortly after that with some other talk and with no further talk of the Justice Department.

Either later that day or the next day, Mr. Edlin and I met with Mr. Lamar Caudle. The latter had previously been a member of the Department of Justice in the Attorney General's office, and during our conference, he advised us that he had had many such cases come before him, that is, parties seeking a review. He further stated that he always warned any one seeking such a review that the odds were strongly against the matter being dismissed, that their only hope or possibility of a dismissal would be to make an absolute, complete, unqualified disclosure to the Department of Justice of all their defenses, of any and all evidence that they had to justify [4332] their position, their conduct and that in the event, after a review of these materials, the Department of Justice was disposed to go ahead with the case, that all such materials would be made available to the prosecuting attorney by the Department of Justice, and that he, Mr. Caudle, thought that this was a very grave risk for any defendant under a criminal charge, to take.

Mr. Edlin reiterated again his absolute conviction of his innocence: Of the fact that these charges were not brought to prosecute him but were brought to destroy him, and the companies that he was promoting. That, as long as he could have a review by someone who was impartial, this case would never be tried.

So then Mr. Caudle, Mr. Edlin and I went to see Mr. Johnson. Mr. Caudle explained to Mr. Johnson the same things that he told to Mr. Edlin and again Mr. Edlin had reiterated all he wanted was a fair chance to be reviewed by some impartial body.

Mr. Johnson,—we went on in further conversations, then and Mr. Caudle, or Mr. Johnson, I am not sure who initiated it, but there was substantial discussion at this time to the effect that for review by the Department of Justice a memorandum would have to be prepared.

That it would have to set forth what we thought [4333] were the answers and the defenses to all the charges. It should set forth the facts that we thought we could prove as an answer thereto, any legal defenses we thought we had, they should be extremely complete and exhaustive and should constitute a full disclosure of everything we thought we could walk into a court room with trying that case which would assist us.

So, Mr. Johnson again asked Mr. Edlin if he was sure that under those circumstances, he wanted to have his case reviewed. Mr. Edlin again insisted that he was never afraid to have this case reviewed by someone that was impartial.

Mr. Johnson said then that he would contact Mr. Boykin and see if Mr. Boykin could arrange an appointment with the Attorney General.

(Mr. Williams) Excuse me.

Would Your Honor ask Mr. Doub to fix the point of time of this last meeting? I do not think it was done for the record.

(Mr. Doub) When did this meeting occur that you have just testified to?

(The Witness) It could not have been before the 15th of March and I would be inclined to place it on the 16th or 17th, but it would be within that period.

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[4346] (Mr. Doub) I am going to ask him for his explanation of several statements in this FBI statement.

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[4347] (The Court) On what ground do you have a right to offer it? You are not trying to cross examine him.

(Mr. Doub) I think I have a right to ask him the meaning of several statements he has made, Your Honor.

(The Court) You may have a right if the Government uses it on cross examination. You may read it, and you may ask him questions about it on redirect, but to take a statement that a man has given just to support—you can't do it by proving consistent statements. I haven't interrupted you a number of times during your examination in which you got him to say that somebody else had told him something; Johnson had told him something that had happened. That is not proper evidence.

If the Government uses it and reads some statements, and you don't think they have been explained you may ask him on redirect to explain any such statement, but you can't read a statement he has given to somebody else any more than you can put somebody else on the stand to say at some other time he said the same thing he said today.

* * * * * *

[4348] (The jury left the court room.)

(At the Bench:)

(Mr. Genn) I am going to move for a mistrial, Your Honor.

(The Court) Go ahead.

(Mr. Genn) I have already stated previous grounds. I reincorporate those previously made.

I think also, in addition, the Court has from time to time —and I must say, Your Honor, I think we have walked to some extent on egg shells on this—I think the Court has interjected far too much in the case and the examination at the time when it appears that certain statements are made that seemed harmful to the Government. I think this is one-sided.

There were no objections from the Government on many of these things. The Court has interjected itself. I think

further—I am not suggesting any more than what I am stating, and I am also stating, Your Honor, that I think that the Court's questioning of this particular witness beyond a statement of "I don't know" suggested things to the jury, which I think were improper in the [4349] case. He stated that he didn't know certain things, and I think that that was as far as it should have gone.

I again renew a motion for a mistrial on previous grounds and on the grounds I have already stated.

(The Court) Motion denied.

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(Vol. 34):

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[4401] By Mr. Weiner:

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[TR 4372-4374]

By Mr. Doub:

Q. Mr. Robinson, do you recall an air plane trip in July of 1960 from Washington to Miami with Mr. Edlin and Mr. Goldman? A. Yes, sir.

Q. On that trip tell the jury whether you said at any time that you had written Mr. Johnson's speech? A. No. That is not my statement at that time, no, sir. Nor at any other time.

Q. You say you did not make that statement on that plane trip? A. I did not.

Q. Or at any other time? A. That is correct, sir.

Q. Did Mr. Edlin make a statement that he had written the speech? A. Yes, sir.

Q. Mr. Edlin said he had written it? A. Yes, sir, he did.

Q. And what did you reply? A. We had all had several drinks on that particular flight. Mr. Edlin was horsing

around with several of his friends on the plane. He made this statement, and when he made it, I replied, "Mr. Edlin, you not only did not write that speech, you could not write a letter."

Q. In May or June of 1960 or at any other time, did you ever say to Sadie Goldman that "Mr. Johnson is on our pay roll, it is costing Ken plenty", or did you ever use any comparable words? A. No, sir.

Q. Now, there are in evidence, Mr. Robinson certain checks of First Continental Savings and Loan payable to Mr. Johnson which he deposited in his account at the Berlin Bank. Did you ever tell Mr. Edlin at any time in the presence of Mr. Jackson Rains, or not in his presence, that Mr. Johnson would not touch a First Continental check with a ten-foot pole, or words to that effect? A. I have no recollection of any such statement. There was a period of time when First Continental was receiving a great deal of adverse publicity and anyone in any way associated with First Continental was being castigated in one way or another in the newspapers and it is remotely possible that during that period of time I might have made a comment something like that. I have no recollection of making it but there was a period of time when I do not think anyone wanted to be around First Continental when the Washington Post was working on it.

* * * * * *

[4402] Q. Mr. Robinson, let me ask you this question: Have you ever heard of a company known as Edlin, Goldman, Robinson, Inc.? A. I have, sir.

Q. Was that a New York Corporation? A. Yes.

Q. Was it in existence in August through December of 1961? A. I am not that sure of the dates. It sounds like it is correct, sir.

Q. And the Robinson there in Edlin-Goldman-Robinson, was that you, sir? A. It was, sir.

Q. And was this not a company operated in New York

for the solicitation of savings and loan deposits? [4403] A. That was the thing that its activities consisted mostly of. That was not its only purpose but that was primarily the only activity it ever engaged in.

Q. Those were the only activities it engaged in from August to December, 1961, is that right? A. Not quite, sir. Very close to it. There were several attempts, several unsuccessful attempts to arrange through the sale of limited partnership arrangements which were fairly popular in New York at that time. Negotiations had been had on behalf of that corporation in that field but we never did succeed in their negotiations.

Q. And in this primary purpose that Edlin, Goldman and Robinson had of soliciting deposits, they were soliciting deposits, were they not, for First Continental and First Colony Savings and Loan Associations? A. I do not remember whether they solicited for both or not, sir. I know they were soliciting accounts for First Continental and possibly for First Colony.

(Mr. Doub) Possibly what?

(The Witness) Possibly for First Colony. I do not remember for certainty they did.

By Mr. Weiner:

Q. You do know they were soliciting accounts for First Continental? [4404] A. Yes, I am sure of that.

(Mr. Weiner) Mark these, please. I think they can be offered as a group.

(The Court) Mark them Government Exhibit 188-A, B and C and so forth.

Is there any objection, not to the ones which nobody has seen yet but 186 for identification, is that being offered in evidence?

(Mr. Weiner) Yes, sir.

(The Court) And 187 for identification?

(Mr. Weiner) Yes, sir.

(Mr. Genn) I have stated all these checks are completely irrelevant.

(The Court) The same objection and the same ruling.

Mr. Robinson, do you want an objection?

(Mr. Robinson) I join in that objection.

(The Court) Overruled.

* * * * * *

[4405] (Government Exhibit 188-A through 118-K marked for identification.)

By Mr. Weiner:

Q. Mr. Robinson, I show you Government Exhibit 188-A through 188K, for identification, and I ask you if it is not a fact that both the Leisure City Land Corporation and the Charles County Land Corporation between August and December of 1961, paid or advanced some $30,000 to Edlin, Goldman, Robinson, Inc.?

(Mr. Doub) What period is that?

(Mr. Weiner) August through December.

(Mr. Doub) 1961.

(Mr. Weiner) Yes.

(The Witness) I did not actually total these but they appear to be in the approximate sum you mentioned in your question. I would say these sums of money were paid by Charles and Leisure to Edlin, Goldman and Robinson, yes, sir.

* * * * * *

[4409] (The Court) I think we can simplify this if Mr. Doub is willing to admit that Mr. Edlin controls both of them so far as the case against Johnson is concerned and Mr. Williams is willing to admit it so far as Mr. Boykin is concerned and Mr. Robinson is willing to admit it as he said he would testify that that is true, as to them that

would be admissible, but it would not be admissible against Edlin, and I will stop any further testimony along this line.

(Mr. Tydings) I think it has to go further than that. He had to tell the jury on the stand that what he told the Court yesterday was not a fact.

(The Court) This control has never been admitted.

(Mr. Genn) Your Honor, I have said it is not conceded. It is irrelevant to this particular case.

Furthermore, Your Honor, may I state something further? I think that this proceeding to use these checks while it may be designed for one purpose [4410] with respect to this particular witness has the other effect upon the defendant Edlin of suggesting improprieties or suggesting something in reference to Mr. Edlin that I believe as to the issue of materiality and as to the issue of the purpose for which it is given goes beyond what is necessary and I think it is improper.

(The Court) I do not think it suggests impropriety. I think it suggests just exactly what is was offered to prove, that Edlin dominated both of the corporations or that he directed them.

(Mr. Tydings) And that he owns them.

(The Court) So far as owning is concerned, if the concession were made on domination, I would say that ownership was unimportant. But if they cannot make the concession on it, I will let it stand as it is.

On the other hand, if these other three defendants will now concede for their purposes that Edlin dominated those corporations, then I will not allow further testimony simply to prove that point.

* * * * * *

[Tr. 4413-4419] CROSS EXAMINATION

By Mr. Weiner:

Q. Now, there is in evidence, Mr. Robinson, as Government Exhibit 54, a letter and preliminary speech draft which appear to be over your signature, dated May 3, I believe. A. Yes.

Q. Of 1960? A. Yes.

Q. That is your signature there? A. Yes, sir.

Q. And the speech draft which is with the letter is the speech draft that was included in that letter when it was sent to Mr. Heflin by you, was it not, on May 3, of 1960? A. That is correct, sir.

Q. And this, Mr. Robinson, is a Congressional, is a preliminary draft of a Congressional speech, is it not? A. It certainly is, sir.

Q. And it was submitted to Mr. Heflin as a speech to be delivered by a Congressman, is that right? A. That is correct, sir.

Q. And that is the reason why Mr. Heflin has the marks "Mr. Speaker" throughout it—referring to the House of Representatives? A. I would presume that is why he made those alterations and changes, yes, sir.

Q. You told him it was a speech to be delivered in the House of Representatives by a Congressman, did you not? A. No, sir, Mr. Weiner. If you wish the explanation, I will be glad to make one for you, sir.

Q. All right. A. I first met Mr. Heflin to my best recollection, I believe it was in April of 1960 when he came to Miami. I think that was his testimony. I met him at that time along with Mr. Edlin and I believe one of the other personnel of First Continental Mortgage was present. I do not remember who it was at this moment and we discussed at that time his engaging in the public relations field on behalf of the Institute, and the independent savings and loan associations.

We discussed these only generally at that meeting and as to whether or not he would undertake it. He agreed that he would. Thereafter, on one of my trips after that meeting to Washington, I met and conferred with Mr. Heflin. We discussed various methods and means of public relations. I had previously to this sent him a rather lengthy letter setting forth the various matters that we considered problems, or matters to be promoted in a public relations campaign. In this meeting and after further discussing the matters in my letter, Mr. Heflin said that he felt that there was enough material here where he could ultimately persuade some Congressman to make such a speech in this field which might promote our interests.

No Congressman in particular was picked or selected. There was the hope that some Congressman could be persuaded to become interested in this subject matter. He did mention one or two that he knew or had knowledge about that were connected with the banking committees in the House that he thought possibly might become interested in this subject and he suggested that I prepare a proposed speech.

Q. Did he say whether or not he had already contacted those people? A. It was my understanding that he had not contacted anybody at all, but had merely thought this was something that might be done and, as a preliminary to that, he suggested that I prepare what I thought would be a proper speech in that area. Therefore, in May, I did prepare a speech which I sent to Mr. Heflin. I had no Congressman in mind and I do not believe that he had any Congressman in mind.

Q. You did not have a Congressman yet who would deliver that speech? A. We had not even discussed any Congressman. I felt—and Mr. Heflin felt—that the subject matter and the wrongs that I was complaining of were something that some Congressman, if made aware of these things, would react to and probably would make a speech on this subject.

Q. But you knew it would be a Congressman and not a Senator, did you not? A. I did not know who it would be. Mr. Heflin in making with me this—well, in talking with me, he had talked about Congressmen. Now whether by that he meant someone in the House or someone in the Senate, I would not know and I would not know to this day whether it would be preferably one place or the other.

Q. Did you not have any discussion with him before he put in the words, "Mr. Speaker?" A. No, sir, the only discussion we ever had in regard to this draft was his advising me that this was entirely too strong, that, in his opinion, nobody in Congress would give a speech in the form that I had prepared and that it was completely unsatisfactory.

Q. Now, are you saying then that he undertook on his own to pick someone in the House of Representatives or to have someone in the House of Representatives do it rather than a Senator? A. I think he exercised his own judgment. I do not like the selection of the words "to have someone". We felt, and I still feel to this day that there are matters here that are improper which, if properly presented by any public-spirited member of the House or the Senate, that they are subject matters for a speech—for a proper speech.

I still think there are matters here that are subject matter of a Congressional investigation. There are some very serious matters in the field and I think a Congressman, if made aware of them, would likely make a speech whether he be in the House of Representatives or in the Senate.

Q. Tell us this, if it did not matter whether it was a member of the House of Representatives or a Senator, did you raise any objection when he tailored it to be a speech for a Congressman? A. Mr. Weiner, until it was introduced in Court, I never saw the corrections made on this particular draft.

I would have made absolutely no objection had I known of them, and it very well may be that Mr. Heflin had many

more contacts in the House of Representatives than he did in the Senate. Why he chose the House, I do not know, sir.

Q. This was only one of several drafts that you prepared for Mr. Heflin, was it not? A. I am not absolutely certain but I think I prepared a subsequent draft. It was very close to this and he turned that down, too.

Q. Now, Mr. Robinson, I believe you also testified that it is not your recollection but that you do not deny that you went with Mr. Heflin to Congressman Johnson's office some time in May when he was turned over or was introduced to Mr. Buarque? A. I do not deny it. I do not remember it but I do not see any reason why he would have said it if it had not happened.

Q. Didn't he confer with you from time to time while he was working with Mr. Buarque? A. No, I do not believe he did, sir. I gave Mr. Heflin the materials and my thoughts on this and I did that over a period of about three meetings. There was no need for me to sit down and tell him the same thing all over again. I had told Mr. Heflin what my thoughts were, what my theories were, what the things were that I thought something ought to be done about. I had delivered that to him.

There was no reason for me to tell him the same thing all over again. He was a very intelligent man.

* * * * * *

Q. And that Mr. Edlin said that these charges were being brought not to prosecute him but to destroy him? A. That is correct, sir.

Q. And then you, Mr. Caudle and Mr. Edlin all went over to Congressman Johnson's office? A. Yes, sir.

Q. And that Mr. Johnson, on page 4333, again asked Mr. Edlin if he was sure that under those circumstances he wanted to have his case reviewed, and that Mr. Edlin again insisted that he was never afraid to have his case reviewed by someone that was impartial? A. That was my testimony, sir, and still is.

Q. Isn't it true, Mr. Robinson, that Mr. G. C. A. Anderson, the man who was representing Mr. Edlin in that particular criminal case, was not consulted or even informed that the Congressmen were going to go over to the Department [4498] of Justice and discuss this case or make any disclosures of what defenses there were in that case? A. To the best of my knowledge that is absolutely correct. I certainly never informed him. Mr. Edlin never told him in my presence, and generally speaking, when Mr. Edlin talked with any of these lawyers I was with him. Actually I was collecting the evidence in the case, and at that particular time Mr. Edlin was treating me as his counsel in the case. I was not his counsel of record, but I was assisting with the case.

Q. Is it not also true that the chief defense lawyer in that case was Mr. Paul Berman, who had entered his appearance for First Colony Savings and Loan Association? A. I think that might be so.

(The Court) What do you mean chief defense counsel? If he had entered his appearance for First Colony.

(Mr. Tydings) I think the witness has just answered the question, Your Honor.

(The Witness) I did not answer the question.

By Mr. Weiner:

Q. Mr. Berman was the one who was supervising generally the preparation for the trial of that case, wasn't he? A. I am not sure I can go with you on that, Mr. Weiner. I think it is almost a fair characterization possibly [4499] to say insofar as Baltimore counsel is concerned, he was generally considered chief counsel. I don't mean in any way to try to put myself in the field of criminal law above Mr. Berman, because it would be ridiculous, but nevertheless Mr. Edlin at this period of time was discussing this case almost solely with myself. He never had a conference that I know of with any of these attorneys without taking me along. I was the only man that was familiar with every

facet of what had been going on, and while I would never characterize myself as the chief counsel in the case, because I wasn't, at this time the relationship was such that these matters, when they were discussed, were discussed primarily with myself.

* * * * * *

[4497] By Mr. Weiner:

Q. Now, I believe you testified yesterday that Mr. Edlin and you met with Mr. Caudle, and there was a discussion about a review of the case, and that the only hope or possibility of dismissal Mr. Caudle told you would be an absolute, complete, unqualified disclosure to the Department of Justice of all of the defenses and of any and all evidence that there was to justify the defendant's position; was that your testimony yesterday? A. Yes, sir.

[4502] CROSS EXAMINATION

By Mr. Williams:

* * * * * *

[4506] Q. * * * First of all, with respect to First Colony Savings and Loan Association, who named the officers of that company? A. I would say Mr. Edlin insofar as any officers that were named after I became associated with him.

(Mr. Genn) Your Honor, just so the record may be clear. I object to and continually object to this line of questioning and will not repeat the objection, so we may proceed.

(The Court) Overruled.

By Mr. Williams:

Q. Who named the directors of that Association? A. Mr. Edlin.

Q. Insofar as you had a relationship with that association who made the policy decisions of that Association? A. Mr. Edlin.

Q. Who hired and discharged the employees of that Association? A. Well, that is a slightly different situation, Mr. Williams. This would, I suppose, depend on the type of employee. Stenographic help and things of that nature might [4507] well be hired and fired without Mr. Edlin's participation in any way.

Q. Would such personnel be hired and fired by someone superior or subordinate to Mr. Edlin? A. Well, somebody that—the person doing the hiring and firing would be somebody that Mr. Edlin had approved as being an officer or having been qualified.

Q. At any time to your knowledge was there held a stockholders meeting of First Colony Savings and Loan Association? A. Yes, sir.

Q. There was. And who was there present? A. Well, that would be, I suppose, myself, actually acting for or being authorized to act for First Continental Mortgage Corporation, which was the stockholder.

[4508] Q. And who held the stock in First Continental Mortgage Corporation? A. Mrs. Edlin held all or most of it.

Q. Now, directing your attention now to the First Continental Savings and Loan Association, who appointed the officers of that association? A. Mr. Edlin.

Q. Who appointed the Directors of that Association? A. Mr. Edlin.

Q. Who made the policy for that Association, operational policy? A. The basic policies were established by Mr. Edlin.

Q. Who was the final authority to your knowledge with respect to decisions of that company? A. On a policy decision, I would say Mr. Edlin. This would not be true as to every decision.

Mr. Edlin would invariably acquiesce in my decision if I

told him some activity were illegal. He would not try to override my decision in that regard at all.

Q. Now, Mr. Robinson, did you—to your knowledge—know of a stockholders' meeting of First Continental Savings and Loan Association during the time in which you were associated with it? [4509] A. Yes, sir, it would have been held in the same manner as I testified to on First Colony.

Q. Who was there present? A. It would be myself and I would have someone else. I do not know who would be appointed for the purposes of the meeting so we could hold a meeting.

Q. Who held the stock in the company? A. First Continental Mortgage.

Q. Now, directing your attention specifically, Mr. Robinson, to the Charles County Land Company, it was formed in 1961; who appointed the officers in that company? A. Mr. Edlin.

Q. Who named the directors? A. Mr. Edlin.

Q. Do you know who the stockholders of that company were? A. No. All I can tell you on that, as I told his Honor, yesterday, the actual stockholders would be International Electronics.

Q. International Electronics? A. Electronics and Oil, I believe.

Q. Who were the directors of International Oil and Electronics? [4510] A. I do not remember, sir. I believe Mr. Rasnek was one. But I just could not remember.

Q. Who were the officers? A. I believe the officers and directors were the same with the exception of myself and I was appointed as, was given a title as a special vice president for the purpose of consummating a particular transaction.

Q. Who named the officers and directors of International Electronics? A. Mr. Edlin.

Q. Was not the name of that company International Oil and Electronics Corporation? A. I think you may be correct.

Q. To your knowledge, who were the stockholders of International Oil and Electronics Corporation? A. Illinois Mortgage Corporation.

Q. Illinois Mortgage Corporation. A. Yes, sir.

Q. Who were the officers of the Company, the Illinois Mortgage Corporation? A. I do not remember, sir. I believe I may have been one but I am not sure of that.

Q. Who were the directors? A. I do not remember now, sir.

Q. Who named them? [4511] A. Mr. Edlin.

Q. Who were the stockholders of Illinois Mortgage Corporation? A. I do not know, sir.

Q. Now, directing your attention to Leisure City Land Company. A. Yes, sir.

Q. Who named the officers of the Leisure City Land Company? A. Mr. Edlin.

Q. Who named the directors? A. Mr. Edlin.

Q. Who were the stockholders? A. It would be the same as the stockholders in the Charles County Land Company. It would be the same as Charles County.

Q. It was International Oil and Electronics Corporation? A. Yes, sir.

Q. Is that the company you just told us about? A. Yes, sir.

Q. Did you at any time during your association with these companies, Mr. Robinson, meet any one in a position of

authority over Mr. Edlin with relation to any one of these companies? [4512] A. No, sir.

* * * * * * *

[4540] CROSS EXAMINATION

By Mr. Genn:

Q. Mr. Robinson, you said that—

(Mr. Edlin) I would like to approach the bench, if I may with my counsel on the premise of the same privilege that was extended to Mr. Johnson, and discuss what my wishes or my desires could be with the Court.

(The Court) You mean by yourself?

(Mr. Edlin) Yes, sir.

(The Court) Without the Government present, or without any of the other defendants present?

(Mr. Genn) May we have a recess, Your Honor?

(The Court) I think that is entirely all right.

(Mr. Genn) May we have a recess?

(The Court) Is there any objection? Would anyone have any objection?

(Mr. Edlin) I have objection to other counsel except the Government.

(The Court) Well, do any of the defendants object to the Government being present?

[4541] (Mr. Williams) Yes, we do. We are in this case, Your Honor. We want to be party to all of the proceedings.

(Mr. Genn) Your Honor, I think we should have a recess.

(The Court) I guess we had better take a brief recess. I hope we can finish with Mr. Robinson today so, the jury will be excused for the moment.

* * * * * * *

(Vol. 35 [4546]) PROCEEDINGS

(The Court) Just to get the record straight, I understand the request for some further delay made at the last moment on Thursday is now withdrawn.

(Mr. Genn) That is correct.

(The jury entered the jury box.)

CROSS EXAMINATION (resumed)

By Mr. Genn:

Q. Mr. Robinson, with regard to the savings associations, the First Colony and First Continental, various [4547] persons had various responsibilities, is that not correct? A. Yes, sir.

Q. For example, Mr. Rains was responsible for the accounting aspect or area of concern of the business, is that right? A. Yes, sir.

Q. And Mr. Wyckoff was responsible and had an area of concern in advertising? A. That would be correct, sir.

Q. And you, along with Mr. Goldman, had the responsibilities in the legal area, is that not correct? A. Yes, sir.

Q. . . . Now with respect to the loans and that substantial part of the savings and loan business known as loan negotiations, process of loans and so forth, that was the responsibility of Mr. Edlin, is that not correct? A. That is correct, sir.

Q. That was the money-making aspect of this business, is not that true? A. Yes, sir.

Q. Now, would it not be fair to say, sir, that when it came to a clash of opinion or disagreement between Mr. Edlin interested in the loan aspect of the business and loan policy and the persons I have mentioned in their [4548] areas of responsibility, such as Mr. Rains in accounts, Mr. Wyckoff in advertising, and yourself and Mr. Goldman in Legal,

when it came to a clash with Mr. Edlin in this regard, is it not fair to say that the ultimate result was that he would defer to and give in to those individuals in their areas of responsibility? A. In the area of legal responsibility at all times he would do so. In the area of accounting, I think it would be fair to say that he would ultimately acquiesce in Mr. Rains' judgment when there was a disagreement and I think the majority of the time this would be true as to Mr. Wyckoff but I could not say as to Mr. Wyckoff it would be true in every instance.

(Mr. Genn) I do not believe I have anything further.

[4585-6] Q. Now, you mentioned on cross examination the name of a company called Edlin, Robinson and Goldman Company. Did you ever receive any money directly or indirectly from that company? A. No, sir.

Q. Now, will you tell the jury, Mr. Robinson, whether your contribution of $500 enclosed with your letter of June 20, 1960, to Mr. Johnson's campaign had any relationship to the speech which he later made? A. No, sir, it did not.

Q. Did your $300 campaign contribution in November, 1960 have any relationship to the speech which he made five months before? A. No, sir.

Q. Was Mr. Johnson at any time an officer, director or stockholder of Charles County Land Company? A. No, sir.

Q. Was Mr. Johnson at any time an officer, director or stockholder of Leisure City Land Company? A. Mr. Doub, Mr. Johnson was never an officer, director [4586] or stockholder of any of the corporations which have been mentioned in this case to the best of my knowledge.

Q. Mr. Robinson, you have indicated that you know more about the legal services performed by Mr. Johnson than anyone else; based upon your experience as a lawyer do you consider the fees which he received for the legal services you have described as reasonable and fair, or do you con-

sider them to have been excessive? A. I would say that the fees which he was supposed to have received would have been extremely reasonable and fair. The $25,000 fee, for example, had to do with his assuming the complete and final responsibility having to do with a foreclosure and subsequent transactions which involve some $9 million. And I think, to have the ultimate responsibility in that area, he was entitled to a very substantial fee.

(Mr. Doub) That is all.

[4646] (Mr. Williams) We are ready, if the Court please.

I call Mr. Hanowell, please.

THEREUPON,

CHARLES L. HANOWELL

was called as a witness on behalf of the Defendant Boykin, being first duly sworn, was examined by counsel and testified as follows:

(The Clerk) State your name for the record.

(The Witness) Charles L. Hanowell.

(The Clerk) Take the stand, Mr. Hanowell.

DIRECT EXAMINATION

By Mr. Williams:

Q. Mr. Hanowell, will you state your name for the Court and the jury? A. Charles L. Hanowell.

[4647] Q. Where do you live, sir? A. 4408 North 17th Street, Arlington, Virginia.

Q. How long have you resided there? A. 19 years.

Q. And what is your occupation, Mr. Hanowell? A. Real estate appraiser.

Q. How long have you been so engaged? A. About thirty years.

Q. And would you tell the Court and jury what associations you belong to with respect to your occupation of real estate appraiser? A. The Virginia Association of Assessment Officers and the American Society of Appraisers.

Q. And have you served on any real estate reassessment boards? A. I served on the Re-Assessment Board for Real Estate in Arlington County in 1950-1951 and 1956-1957, and as President of the Northern Virginia Real Estate Association in 1950. I was Vice-President of the Virginia State Association in 1951.

Q. How long, Mr. Hanowell, have you been engaged in the profession of making appraisals of real estate? A. Thirty years.

Q. And during that time will you state whether or not you have made appraisals of real estate on improved ground for [4648] the Federal Government? A. Yes, sir.

Q. Would you state what agencies or branches of Government you have done this for? A. The General Services Administration, United States Army Corps of Engineers, Washington District, which included the appraisal of the Nike sites in Charles County, Anne Arundel and Prince George Counties. For the Bureau of Public Roads.

I testified in this Court for the Department of Justice in a condemnation action on a Nike site in Charles County near Pomfret and Waldorf.

Q. Did you participate in the appraisal on the ground on which not sits the new Dulles Airport? A. I was an associate on the appraisal for the acquisition of the land now used for the Dulles Airport.

Q. Was that for the Government, sir? A. Yes, sir.

Q. Have you performed appraisals of real estate for local governments? A. Yes, sir, for the Arlington County Board of Supervisors, the School Authority, the School Board, Park Authority of Fairfax County, the Sanitary Sewer Commission of Prince William County, the school boards,

the Arlington County Public Utilities Commission, the Virginia [4649] Department of Highways, the Virginia Electric and Power Company, which is actually not a governmental institution.

Q. Have you done any teaching of real estate appraising at any universities? A. I am an instructor in the appraisal of real estate at the University of Virginia Extension Service, and have been for the last three years, and I am still in that field.

Q. Now, Mr. Hanowell, directing your attention to a tract of ground, which consists of 7,937 acres, situated in Charles County, Maryland, and sometimes referred to as Linda City, some of which borders on Route 301. Did you have occasion, sir, to make an appraisal of that ground? A. I did.

Q. And when did you make it? A. The appraisal was made in December 1962.

Q. For whom did you make that appraisal, Mr. Hanowell? A. Mr. Francis J. Finneran.

Q. And can you tell the jury with what company Mr. Finneran is associated? A. Mr. Finneran is the owner of the Feda Realty Corporation, and the owner of the Charles County Land Company.

Q. And can you tell the Court and jury whether or [4650] not Charles County Land Company holds title to that tract? A. Charles County Land Company, according to the records in Charles County, has title to the 7,937 acres.

Q. Now, first of all, I will ask you, Mr. Hanowell, how long did you engage yourself in making this appraisal? A. It took about three and a half weeks.

Q. And did you associate anyone with you for purposes of this task? A. I did. Mr. Richard Parli.

[4671] By Mr. Williams:

Q. I asked you, Mr. Hanowell, what did you and Mr.

Parli conclude to be the fair market value of the Waldorf tract of ground as of December 22, 1962.

(The Court) I understand you are going to follow that up, Mr. Williams, based on what we said at the bench, by showing what change, if any, there has been in developments which would change the value from the period which we are interested in of somewhere in 1960-1961 until December 6, 1962.

(Mr. Williams) 1961, specifically.

(The Witness) $12,250,000, or $1,350 per acre, a total of $12,250,000, of which a certain sum was assigned as the market value of the deed of trust which exists on the property.

[4672] Q. Now, did you hear the question that His Honor propounded a moment ago to me, Mr. Hanowell? A. Yes, sir.

Q. Now, is there anything that you were able to find [4673] that affects the value of this property in your opinion between December, 1962 and May of 1961 other than the acquisition of the Ryon tract which you told us about, and then I am going to ask you how much you would discount your appraisal for the Ryon tract?

(The Witness) As an estimate based on increased values and now it is difficult to determine without going back to those dates you would then be governed by sales that took effect prior to it and development and those patterns prior to that time, but generally the market increase has been about 7 per cent from January of 1961 to December 1962.

By Mr. Williams:

Q. So you would say approximately there was an increase in the value of real estate in that area from January 1, 1961 to December, 1962 of about 7 per cent? A. Approximately 7 per cent, yes.

[4674] Q. How much would you take off your appraisal,

Mr. Hanowell, by reason, if you subtracted the Ryon tract, which was acquired by Charles County in 1961? A. About $1,000 an acre or $200,000.

Q. About $200,000? A. Yes.

Q. Which would reduce your appraisal to $12,050,000 and then you would take 7 per cent off because of increase in real estate values, is that correct? A. Yes.

Q. Well, what would your expert opinion be then as to the value, the fair market value of the tract absent the Ryon tract, at approximately May 1, 1961 if you can do some quick mathematics for us. A. That would be an approximation figure because I have not any definitely examined change—I have not definitely examined the change in land values or values in the particular area but it is approximately in the area of about 7 per cent.

[4675] By Mr. Williams:

Q. Now, Mr. Hanowell, have you had occasion to make a preliminary study of the tract of ground known as "The Leisure City tract" in Brooke, Stafford County, Virginia? A. It has been very preliminary, Mr. Williams. I have gone over the tract in a helicopter. I have had occasion to make appraisals in the general area on some highway condemnations both for the State Highway Department and for property owners, and one appraisal was on property near the Stafford County Court House at Aquia Creek for a New York concern liquidating a corporation.

I have not made a complete study of the Brooke tract. I have not been furnished with the topography of the tract. I have checked it on the Coast

[4680] By Mr. Williams:

Q. What is your preliminary, tentative opinion with respect to the value of the Brooke property? A. Between $4,500,000 and $6 million—between $900 and $1200 per acre.

[4683] DIRECT EXAMINATION

By Mr. Williams:

Q. Would you state your full name, please, Mr. Parli? A. Richard L. Parli.

Q. Where do you live? A. 4671 North Ditmar Road, Arlington, Virginia.

Q. How long have you lived there? A. In Arlington?

Q. Yes, sir. A. I have lived in Arlington for about 18 years. I have lived at this particular address for about ten years.

Q. What is your occupation, Mr. Parli?

[4686] Q. Did there come a time in 1960 when you participated in making an appraisal of a tract of ground in Waldorf, Maryland? A. Yes.

Q. Is that a tract consisting of some 7,937 acres? A. It is.

Q. Would you tell the Court and the jury approximately how much time you spent on that task? A. Approximately 8 days, 8 or 9 days on it.

[4698] Q. Now, did you form an opinion with respect to the fair market value of the tract of ground near Waldorf known as "The Linda City tract" as of December, 1962? A. The total value?

Q. Fair market value? A. Yes.

Q. What was that? A. $12,250,000.

Q. Now, further than the tract that we have been discussing in the last two or three minutes, is there [4699] any difference between the tract known as "Linda City" as of May, 1961, and December, 1962? A. No.

Q. Would you discount your appraisal of the fair market value of the Linda City tract if you subtracted the so-

called Ryon tract from it? A. Would I arrive at a lower figure?

Q. Yes. A. Yes.

Q. Approximately how much, sir? A. $1,000 an acre.

Q. $1,000 an acre? A. Yes.

Q. That would be roughly $200,000 less, is that correct? A. Yes, sir.

* * * * * *

By Mr. Williams:

Q. Now, Mr. Parli, is it or is it not the fact that there has been an increase in real estate values in [4700] the Metropolitan area for unimproved ground in 1961 and 1962? A. There has but it is almost going up monthly, you might say.

Q. Would you say that from January, 1961 to December of 1962, that there has been an increase? A. I would say there has been at least a five per cent increase and possibly as much as six or seven per cent.

(Mr. Williams) I have no further questions, Your Honor.

* * * * * *

[4790] (Mr. Williams) I am calling Mr. Lykes Boykin.

Thereupon

LYKES BOYKIN,

a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

(The Clerk) State your name, please.

(The Witness) Lykes M. Boykin.

(The Clerk) Lykes M. Boykin, take the stand, please, sir.

By Mr. Williams:

Q. Would you state your full name for the jury. A. Lykes Mueller Boykin.

Q. Where do you live? A. Arlington, Virginia.

Q. How long have you resided in Arlington? A. In Arlington and Alexandria since approximately 1945.

Q. What is your occupation, Mr. Boykin? A. An attorney.

Q. How long have you been so engaged? [4791] A. I finished law school in 1948.

Q. And you are admitted to the bar, are you? A. I am, District of Columbia and South Carolina.

Q. Do you know the defendant Frank Boykin in this case? A. I do.

Q. Are you related to him? A. I am not related to the Congressman in any way.

Q. In 1958 did you know him? A. I did.

Q. Are you familiar with the tract of ground near Waldorf, Maryland which Congressman Boykin had an interest in? A. I am.

* * * * * *

[4858] By Mr. Williams:

Q. Now, I had asked you whether or not there came a time when you were retained by a prospective purchaser of the Waldorf tract in 1961? A. In 1961 there came a time when I was retained by a gentleman who attempted to buy the stock of these land companies. Is that the matter to which you are referring.

Q. Were you paid by the Feda Realty Corporation? A. Yes.

Q. When did that take place, sir? [4859] A. Some time in November of 1961.

Q. Tell us how that came about.

(Mr. Genn) If the Court please, so I will not interject in this line of questioning. This is not at all material to the case. I will object to Mr. Williams' proceeding at least as to this particular defendant.

(The Court) I do not know what the materiality is. "Retained. some later."

(Mr. Tydings) Maybe we had better approach the bench and Mr. Williams can make a proffer.

(At the Bench.)

* * * * * *

[4862] (Mr. Tydings) If Your Honor please, if they open this up, then the Government feels we have a right to cross examination to show that this was a phoney sale and that the price was—

(Mr. Williams) You make that statement in front of the jury.

(The Court) If that is Mr. Genn's objection, I will allow the evidence in but neither this evidence nor any cross examination in connection with it will be admissible against Edlin.

(Mr. Williams) Are you charging now, Mr. Tydings, so the record will be clear on this, that this was a phoney sale—is that correct?

(Mr. Tydings) Let me explain exactly what I mean. That the consideration above the purchase money mortgages and mortgages from the savings and loan in the amount of some $7 million or $8 million worth of notes to the Illinois Mortgage Corporation was completely watered, was settled in 1962 for $180,000 or $200,000. That is $7 million or $8 million worth of notes and for that reason we feel that it is not valid.

(The Court) Then the whole thing can come in except Edlin or anybody else.

* * * * * *

[4864] (In open court.)

(The Court) As a result of this for the time being I am going to tell you not to consider any of this evidence that is about to come in as against Mr. Edlin nor any cross examination which the Government may give in connection with this should not be considered as any evidence for or against Mr. Edlin. No other persons have objected except the Government.

I will overrule the government's objection and the evidence that you will now hear and any cross examination or rebuttal of this evidence that may come in will be admissible for or against each of the other three defendants, Johnson, Boykin and Robinson.

If anything should develop which would make me change my ruling with respect to Edlin, the Government may so move and I will hear Mr. Genn. Of course, something might happen which would make it material to Mr. Edlin. But, as presently advised and on the proffer, I sustain Edlin's objection as to him.

All right. Go ahead.

[4865] By Mr. Williams:

Q. Mr. Boykin, I was asking you about your representation of the Feda Realty Corporation. A. Yes.

Q. You began that in 1960, November, right? A. 1961.

Q. 1961, I am sorry, November, right? A. Approximately November of 1961.

Q. Who was president of that company? A. Mr. Francis J. Finneran.

* * * * * *

[4866] By Mr. Williams:

Q. Did you represent them in negotiations for the Waldorf tract about which you have testified here today? A. Yes, but these were negotiations simultaneously for the stock of the two land companies.

Q. When you say the "two land companies," which do you mean? A. Charles County Land and Leisure City.

Q. When you began to negotiate for Feda Realty Land Company with whom did you negotiate? [4867] A. When I was negotiating for and on behalf of Feda Realty for the purchase of the stock.

Q. For whom did you negotiate, who was speaking for Charles County and Leisure City? A. Mr. Edlin and Mr. Robinson.

Q. During what period of time did these negotiations take place? A. November-December of 1961.

Q. Did there come a time when Feda Realty did in fact, buy all of the stock of Charles County Land Company and Leisure City Land Company? A. There did come such a time December 7, 1961.

* * * * * *

[4869] By Mr. Williams:

Q. Mr. Boykin, will you, for the purpose of the jury, summarize the agreement which was entered into on December 7, 1961, between your client—Feda Realty Co., and Charles County Land Company and Leisure City Land Company. A. Yes, sir.

Mr. Williams, the agreement dated December 7, 1961 was entered into between the Feda Realty Corporation [4870] as one party, and International Electronics Oil Corporation as the other party for the purchase of all of the stock of Charles County Land Company and Leisure City Land Corporation. The purchase price above all purchase money mortgages, the purchase money mortgage being approximately $5,875,000, at Waldorf and $2,875,000 remaining to be paid at Brooke, and in addition to loans that had been effectuated during this interim period between First Colony Savings and Loan Association and Charles County Land Company, Inc., in the gross amount of $3,750,000 under which $1,250,000 was represented to have been drawn down under that loan, an $843,750 loan,

between First Continental Savings and Loan Association and Leisure City Land Corporation, and a representation was made that the sum of $453,750 was drawn down under that loan. This meant briefly—

(The Court) Drawn down by whom? You mean had been drawn down by the Land Company?

(The Witness) By the land company, yes.

(Mr. Genn) Your Honor, I stated I have an objection to this line. This entire line. I presume that is the Court's ruling.

(The Court) Of course, your objection holds unless and until there is some motion by the Government to the contrary. Go ahead.

[4871] (The Witness) So briefly, this was the purchase of the stock of these two land companies for $6 million with the assumption of the two purchase money mortgages and the assumptions of those amounts of money which had been drawn down under the savings and loan association loans to the respective land companies. Now, there were major representations—

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By Mr. Williams:

Q. What, Mr. Boykin, was the amount contracted to be paid first of all, for the stock of the two companies? A. $6 million in excess of all existing obligations.

Q. What obligation existed on the books of the Charles [4872] County Land Company at the time that its stock was bought. How much did it owe? A. It owed the sum of $5,875,000 to the Ernest Estate. Albert Ernest had passed away at this time.

Q. That was the purchase money mortgage that we have been talking about this afternoon? A. Yes.

Q. Did it have any other debt on its books at the time, of December 7, 1961? A. It did.

Q. What was the amount of the debt? A. $1,250,000.

Q. What was the amount of the mortgage on the Leisure City Land Company at the time? A. $2,875,000.

Q. What was the amount of the debt on the books of Leisure City Land Company? A. $453,750.

Q. Did Feda Realty Corporation assume the mortgage, debts and the other two debts which you have just enumerated? A. They did. They necessarily had to because they were debts of the corporation control of which they—

Q. Have you made a computation of the total?

[4873] (The Court) You say that they specifically individually assumed the debts? You said they necessarily had to, or did you mean the land companies?

(The Witness) The land companies in the purchase of the entire thing, Your Honor, they necessarily had to assume.

(The Court) Did they assume personal responsibilities?

(The Witness) No, there was not personal liability except for a portion of this that I will be most pleased to explain.

(Mr. Williams) I propose to show, Your Honor, they assumed it because they paid it.

(The Court) The question is, under the contract did they assume it, and to assume means that you undertake personal responsibility for paying it and not that you buy something subject to a lien.

(Mr. Williams) Your Honor, this will not rise very high in importance because the fact is that they made payment on these debts.

(The Court) All right.

(Mr. Williams) Now, let me ask you this, Mr. Boykin:

Did the two land companies own any assets in the

[4874] whole world in December 1961, other than the two pieces of ground, one at Waldorf and one at Brooke? A. Not to my knowledge.

(The Court) You mean there had been no improvements on them at all?

(The Witness) No improvements were made that I was aware of.

(The Court) What had the money been drawn down for, then?

(Mr. Williams) I am going to bring that out, Your Honor. I think this is an exciting subject, too, and I want to develop it and bring it out.

* * * * * *

(Vol. 37 [4890]) Q. Now, I am going to ask you, Mr. Boykin, first of all, a general question and then I will ask [4891] some specifics with respect to this agreement.

Generally, what did Feda Realty Corporation, represented by you, agree to do under the terms of that document? A. Under the terms of this document Feda Realty Corporation agreed to pay to International Electronics and Oil Corporation $6 million for all of the stock of Charles County Land Company and Leisure City Land Corporation.

Q. Now, the next question that I will ask you, and then I will get into the method of payment, is, what was the existing indebtedness owed by Charles County Land Company on the purchase money mortgage on the Waldorf tract to Albert Ernest at the time of this agreement? A. There was the amount of $5,875,000 owing to the Estate of Albert Ernest, Mr. Ernest having passed away at that time.

Q. Did that obligation remain an obligation of Charles County Land Company under this agreement? A. It did.

Q. Did Feda Realty Corporation assume on its own a further obligation toward that money, that indebtedness?

* * * * * *

[4892] By Mr. Williams:

Q. It remained an obligation of Charles County Land Company? A. Yes.

Q. Feda became the sole stockholders of Charles County Land Company? A. Yes.

[4893] Q. Now, did the indebtedness of $2,875,000 of the Brooke, Virginia property, the indebtedness running from Leisure City Land Company to the Tensaw Land and Timber Company remain an indebtedness of the Leisure City Land Company after this agreement? A. It did.

Q. And who became, under the terms of this agreement, the sole stockholder of the Leisure City Land Company? A. The Feda Realty Corporation.

* * * * * *

[4900] Q. What happeneded after the execution of this agreement with respect to the two savings and loan associations which you have mentioned—First Continental and First Colony? A. Not too long after this transaction was closed December 7, 1961, First Continental [4901] Savings and Loan Association was placed in receivership under the laws of the State of Maryland.

Q. What about First Colony? A. My recollection is that First Colony was first placed in a conservatorship and it was later changed to a receivership.

Q. Did International Oil and Electronics Corporation fulfill its agreement or its commitment spelled out in Defendant Boykin's Exhibit 33, to make available the development money for the two tracts of ground which you told us about a few answers ago? A. No, I considered that was a breach of representation in accordance with the provisions of this agreement.

Q. What happened after the two savings and loan associations were placed in receivership and the development money was not forthcoming to Charles County and Leisure City? A. Numerous negotiations were held between rep-

resentatives of International and representatives of Feda with regard to the question of settlement, of this $6 million which was the excess on the purchase price. We had various when, as and if type of settlements, none of which was ever concluded until 1963.

Q. In 1963? [4902] A. Right.

Q. Now, would you tell the Court and the jury precisely, Mr. Boykin, what the final terms of renegotiations on this deal were? A. On the payment of the $6 million?

Q. Yes, sir. A. One of the $50,000 personally confessed judgment promissory notes signed by Mr. Finneran was payable at the rate of $500 per week. All three notes were payable at the end of two years. This was the only one of the three that had continuing payments with regard to it. Approximately, according to my information, $6,000 was paid on that $50,000.

(The Court) I did not hear that.

(The Witness) $6,000 was paid, approximately, on that $50,000, Your Honor. This, combined with the $100,000 cash payment made on the 7th of December, 1961, and a further payment made on November 9, 1962, in regard to some of the settlement agreements of $6,000, and a final payment of $185,000 in cash on the 11th of February, 1963, plus an additional $12,000 in cash on the 13th of February, 1963, come to the total cash amount paid by Feda of $309,000 for the settlement of all outstanding differences between Feda and International.

Also, on the 13th of February, 1963, the [4903] sum of $5,000 was paid as a partial payment on the real estate commission to the James L. Dixon Company. My computation shows this total to be $314,000 in cash.

By Mr. Williams:

Q. Now, sir, what did Feda do—let us specifically say Charles County Land Company—with respect to the indebtedness on its books of $1,250,000 running to First Con-

tinental Savings and Loan Association? A. This was a very, very difficult thing for Mr. Finneran and Feda because shortly after taking over the stock of Charles County and Leisure, it was almost impossible to obtain any improvement funds. We felt that the savings and loan association had breached this agreement because it had committed itself to make available $3,750,000. There was an audit prepared under the Court Order and the audit showed that the sum of $649,957.12 was all that had been drawn down under this $3,750,000 loan. Accordingly, Mr. Finneran on the 31st of December of this past year, 1962 made payment in full in cash of $649,957.12 to a combination of First Colony and First Continental Savings and Loan Association, as this was a joint venture.

(The Court) To the receivers or conservators, whoever it was?

[4904] (The Witness) Yes, sir.

By Mr. Williams:

Q. Who was it, Mr. Boykin, that determined that it was exactly $649,957.12 that had been, in fact, advanced to Charles County Land Company by First Continental? A. The receiver informed us that this was the amount.

Q. Who was the receiver? A. Mr. John McKeever.

* * * * * *

[4905] By Mr. Williams:

Q. Now, Mr. Boykin, was there any determination as to the use to which the $649,957.12 had been put?

(Mr. Genn) I have an objection to the entire line.

(The Court) I know you have, Mr. Genn, and I have overruled it up to this point. If you want to object to this, I will require a proffer as to the materiality of this to Mr. Williams. You want a continuing objection? I cannot give you a continuing objection but when I come to a point which I think you may have, and I understand

your position, I am giving you an opportunity. Do you wish to object to this or not?

(Mr. Genn) Yes, of course.

(The Court) Now, Mr. Williams, come up and make a proffer on this.

(At the Bench.)

(The Court) Mr. Williams, will you tell me what is the materiality of the use which has been made of this? If it was an amount it was agreed had been advanced and these people paid, how does its use affect any issue in this conspiracy? Would it make any real difference to any issue in this case even the value, whether [4906] it had been, well, whatever had been done to it.

(Mr. Williams) I think it is material, Your Honor, because I think that if Charles County Land had used the money to develop the ground—

(The Court) Has any of it been used? I thought you got that in. I thought it was said that none of it was being used to develop.

(Mr. Genn) The Court brought it out.

(The Court) I think you have got it and it ought not to be re-emphasized. Therefore, I will sustain the objection which was interposed on Mr. Edlin's behalf.

* * * * * *

[4907] (In Open Court.)

(The Court) The Court is sustaining the objection to this question because I think it was asked yesterday and if someone feels that any correction should be made in the answer given yesterday on this point, the Court will sustain the objection which I think the Court interposed.

(Mr. Williams) Your Honor, I cannot recall whether it was answered yesterday or not. May I just look?

(The Court) Yes, I think it is page 4874 of the transcript, is it not?

I think it is on page 4874, the answer was "No improvements were made that I was aware of."

[4908] Now, I think that is as far as it went.

(Mr. Williams) Yes, sir.

By Mr. Williams:

Q. Now, Mr. Boykin, did you on behalf of Leisure City Land Company have discussions with McKeever of First Continental in an effort to determine the true amount owing from Leisure City to First Continental on the indebtedness of $453,750? A. Indirectly I did. Primarily through advising my client, Mr. Finneran. He conducted most of these discussions with Mr. McKeever.

Q. Has there been a determination by Mr. McKeever as the receiver or by his auditors as to the exact amount owing from Leisure City to First Continental? A. As I recall, having looked at the audit report, out of the sum of $449,750, which the individual records claim to be due and owing by Leisure City to First Continental, the auditors themselves said that the sum of $106,000 can not be justified in their opinion as a proper charge against this loan because it had been used to pay salaries of officers of one of the associations, First Continental. There was an originating commission on this particular loan of $156,250. Since this money [4909] was never made available, we certainly did not feel that this was a proper charge.

There was a third amount of $62,500 which was interest in advance on the total amount of the loan. That is $843,750.

In our strong opinion only $125,000 was ever advanced by the association to Leisure City. This argument we made to the receiver. The receiver accepted our argument on this.

The receiver now has a court order authorizing Leisure City loan to be settled, if done so within a period of six

months from the date of that Court Order for a total sum of $125,000.

Q. Now, Mr. Boykin, in your negotiations with International Oil and Electronics Corporation, looking toward the renegotiation of Defendant Boykin's Exhibit 33, with whom did you deal? A. At the beginning we dealt with Mr. Robinson and Mr. Edlin primarily.

Q. And over how long a period did you negotiate with them? A. Over a very considerable period of time after the closing and sale of December 7, during most of 1962 we dealt primarily with Mr. Edlin and Mr. Robinson and then there was an attorney in Chicago—two attorneys [4910] in Chicago that we also negotiated with.

At one stage Mr. Robinson seemed to be taken completely out of the picture and the attorneys in Chicago seemed to have a great deal of jurisdiction from a legal point of view. As I recall, his name was Mr. Teton.

Q. Other than the failure of International Oil and Electronics to make development loans available to Charles County and Leisure City, was there any other breach of the agreement numbered Boykin Exhibit 33 which you urged in the settlement discussions? A. As I recall, there were several breaches, there were a major number of representations set forth in this agreement, as would normally be the case with regard to the purchase of the stock of any corporation.

Representations, for example, with regard to amounts that were due and owing; representations as to the assets of the corporation, replete with representations.

(The Court) Is this material to the issues? Is this material, Mr. Williams? If it is, I want it in. I do not think we ought to go into side issues.

(Mr. Williams) I think a portion of it is, Your Honor.

[4911] (The Court) Why don't you ask a leading question on the portion you think is material?

(Mr. Tydings) We think it is material, Your Honor. We think that the representations by Mr. Finneran should be in front of the jury.

(Mr. Genn) I presume I have the same objection.

(The Court) I instruct the jury that none of this evidence is admissible for or against Mr. Edlin and I will give you further instructions on that when I come to my charge. But both the Government and Mr. Williams assure me that there is material evidence coming in and I think it should come in.

(Mr. [illegible]lliams) I will state it at the bench.

(The Court) If you and Mr. Tydings agree on it, and with the understanding it is not for or against Mr. Edlin.

* * * * * *

[4912] We were informed that if there was any cash in the bank account at that time that this sale of stock was a sale on the basis of the representations made in that agreement and on the basis of no cash in the bank as of that date.

Q. Now, what did you ascertain happened with respect to the bank account or bank accounts of Charles County Land Company after December 7, 1961? A. We were surprised to learn, after we had paid the receiver the $649,000-odd in the beginning of 1963—no, on the 31st of December, 1962—that we began to get back some parts of the books and records of these companies.

One of these showed that approximately $25,000 had been drawn out of the Association and placed in the account of Gotham Bank in New York City, the account of Charles County Land Company. Subsequently checks were drawn on that account.

Q. At the time that Feda Realty Corporation took over Charles County Land Company, were you made aware in the course of your negotiations that there was such an account in the First Gotham Bank of New York? A. We

had no knowledge of it and no information was given to us at that time.

* * * * * *

[4913] (Mr. Genn) May we approach the bench?

(The Court) Yes.

(At the Bench.)

(The Court) What is the point, Mr. Williams?

* * * * * *

[4916] (Mr. Williams) I do not think we made clear to you why we offered it, Your Honor.

(The Court) You certainly have not.

(Mr. Williams) The objections came so fast here. You see, Your Honor, I think this is very relevant to Boykin's defense, and I readily subscribe to the fact that it may be damaging to another defendant and it is not offered for that purpose but that is one of the problems we have.

[4917] (The Court) Why is it material to Mr. Boykin?

(Mr. Williams) Because it shows, Your Honor, on the overall issue of the fair market value of the land, it shows that the reason that International Oil and Electronics, speaking through Defendant Edlin, was willing to negotiate its deal down so far so fast was because—

(The Court) The received negotiated it. Not Mr. Edlin.

(Mr. Williams) No, we are talking about the $6 million being negotiated down.

(The Court) To what?

(Mr. Williams) About $300,000.

* * * * * *

[4921] (Mr Genn) It is just as prejudicial as it is in. He would only show it further by putting in the evidence.

(The Court) I am trying not to re-emphasize prejudicial material if it is in for Mr. Boykin's purposes and he can

get his facts in that he feels are necessary for him and I have instructed the jury that they are not admissible for or against you.

* * * * * *

[4924] By Mr. Williams:

Q. Mr. Boykin, during the negotiations that you held with International Oil and Electronics looking toward the renegotiation downward of your obligation to pay $6 million for the stock of Charles County Land and Leisure City Land as evidenced in Boykin's exhibit 33. It is not the fact that you used as a bargaining level the episode regarding the withdrawal of funds from the First Gotham Account, funds which had been advanced by the savings and loans after December 7, 1961? A. That was one of the factors—

(Mr. Genn) I will object on that, Your Honor.

(The Court) Overruled. I will again instruct the jury that the fact is not admissible [4925] for or against Mr. Edlin.

* * * * * *

[5019] FRANCIS J. FINNERAN

a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Williams:

Q. State your name for the jury, please. A. Finneran, F-i-n-n-e-r-a-n. Francis J.

Q. Where do you live? A. Greens Farm, Connecticut.

Q. How long have you lived there? A. Six years in this home.

Q. What is your business? A. Real estate development and investment.

Q. How long have you been in that business? A. Roughly 25 years.

Q. Are you here in response to a subpoena served on you? A. Yes.

Q. During your 25 years in the real estate investment and development business, have you, or have you not developed tracts of ground for residential purposes? A. Many times, Mr. Williams.

* * * * * *

[5021] Q. What factors were there which interested you if you were interested in the Waldorf tract? A. Well, of course, I have always considered this Waldorf tract's vital value to be in the accumulation of this property, which is the largest single tract this close to any metropolitan city in the country, available as one piece, you see.

Q. What was the acreage in 1961 of that tract? A. Very close to 8,000 acres.

Q. What other factors were there, if any, which interested you in this tract? A. I was very happy with the financing arrangements that were part of the selling arrangements.

Q. What, particularly, in financing interested you, sir? [5022] A. Of course, it was a long-term financing arrangement on the purchase money mortgage. There was an improvement loan at that time standing supposedly available for the eventual improvement and development of the property.

Q. Did there come a time when you entered into an agreement or understanding with Mr. Edlin? A. Eventually, yes.

Q. Was Mr. Edlin represented by counsel during these discussions? A. Yes, many different counsel.

Q. Were you represented by counsel? A. At the last hours of the negotiation.

Q. Who represented you, sir? A. Mr. Lykes Boykin of Boykin and De Francis in Washington.

Q. When you arrived at an agreement or an understanding with Mr. Edlin, did you agree to buy the stock in the

existing land companies or did you buy the land titles from him? A. No, I purchased all the stock of these two companies, Leisure City Land Company and Charles County Land Company.

Q. And from whom did you make this purchase? A. From Mr. Edlin.

[5023] Q. Well, was it Mr. Edlin, personally, and individually, or was it a corporation that he was representing? A. No, it was a corporation that involved International Oil and Electronics.

Q. Did he speak for that corporation? A. Yes.

* * * * * *

[5058] REDIRECT EXAMINATION

By Mr. Williams:

Q. Mr. Tydings addressed a question to you regarding the fact that you bargained Mr. Edlin down from the contract of December 7, 1961 to the figure which you finally paid him for the stock. What were the bargaining factors that you had which you employed to do that, sir?

(Mr. Genn) Same objection.

(The Court) Again I must have a proffer on that to show its relevancy to any issue in the case.

* * * * * *

[5062] (The Court) . . .

* * * * * *

Ask him as a leading question and tell him to answer.

(In open court.)

* * * * * *

By Mr. Williams:

Q. Mr. Finneran, were the factors which induced the reduction in the price of the stock of Charles County Land and Leisure City land to Feda, the fact, No. 1, that the development loan money which had been committed in the

December 7, 1961 agreement, was not forthcoming, and that there had been a $25,000 takeout of Charles County Land Company by the old officers after December 7, 1961? [5063] A. That is the case, sir.

(Mr. Williams) That is all.

* * * * * *

(Vol. 38 [5069]) (Mr. Williams) Yes, sir.

Thereupon

FRANK W. BOYKIN

a defendant, appearing as a witness in his own behalf, being duly sworn, was examined and testified as follows:

(The Clerk) State your name for the record, Mr. Boykin.

(The Witness) Frank W. Boykin.

DIRECT EXAMINATION

By Mr. Williams:

Q. Mr. Boykin, will you state your full name for the Court and the jury, please. A. Frank W. Boykin.

Q. Where do you live, sir? A. Mobile, Alabama.

Q. How long have you lived there? A. Fifty years.

Q. Fifty years? A. Yes, sir, fifty years.

Q. How old are you now, Mr. Boykin? A. I will be 89 in February.

Q. Eighty-nine? A. Seventy-nine.

[5070] Q. Seventy-nine in February? A. Yes, sir, born in 1885.

Q. Are you married, Mr. Boykin? A. Yes, sir, my wife is sitting right over here. It will be fifty years in December; right there.

* * * * * *

[5075] Q. When was it that you were first elected to Congress? A. I beg your pardon.

Q. When were you first elected to the Congress? A. 1934.

[5076] Q. And how long did you serve in the Congress? A. Twenty-eight years. Longer than any other man—any other man served in the House from Alabama. I was elected fourteen separate and distinct times.

Q. And when were you defeated, sir? A. Sir?

Q. When were you defeated? A. When this thing came up last year.

Q. What year was that? A. 1962.

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[5094] Q. Did there come a time when you had a conversation with Mr. Johnson, a defendant in this case, about the Waldorf tract? A. Congressman Johnson, yes, sir. It was just when Congressman Johnson was—it was when Congress convened in January, early January, January 6th, I was talking to Tom about this trouble we were having in collecting our money from Mr. Desser at Waldorf, Maryland, and he told me that he knew of some people that he thought would be glad to finance Mr. Desser, if they could make the proper arrangement. Some people that he was working with to finance a bridge on the Eastern Shore of Maryland.

Q. Did he tell you what, if any relationship he had to the people that he was mentioning to you? [5095] A. He said that he was representing their five properties that they were working on and they had several in Maryland under construction at that time that Mr. Edlin was the banker, and the financier and the adviser on.

Q. Did he tell you who the people were to whom he made reference? A. No, he did not. I asked him if he would bring them in and he said he would so I could talk to them, and he did in the next few days.

Q. Can you tell us when, Mr. Boykin, he brought these people in to you? A. I would not have remembered it, but I looked it up. It was January 6, 1961.

Q. Who was it? A. Mr. Kenneth Edlin.

* * * * * *

[5106] Q. Will you tell His Honor and the jury how many meetings you, yourself, attended regarding the proposed loan from the Edlin group to the Desser and Garfield group? A. Mr. Williams, I imagine I went to a dozen meetings.

Q. Over what months were these? A. Oh, all of those months. They were right—all the time, right from January, about the 10th, I think when—maybe the 15th—right on up until they closed the deal. They did not get together. Mr. Edlin I believe, and all the rest of them had wanted the same thing—fifteen per cent. Mr. Desser would not pay it and Mr. Desser wanted the right to O.K. all the money he was going to furnish, $2,300,000 and he wanted the right to O.K. how Mr. Desser was going to spend [5107] every nickel of that money and what information—

Q. You said Mr. Edlin wanted fifteen per cent. What do you mean by that? A. Interest on the money.

Q. What do you mean, he wanted the right to O.K.? A. Well, if he is going to spend so much on a golf course, Mr. Edlin would want a right to approve any amount he spent on that or anything else of the money that he was loaning.

Q. Was this acceptable to Mr. Desser? A. No, sir.

Q. Did the negotiations go forward to consummation or did they break down? A. They blew up.

Q. Now, did there come a time, Mr. Boykin, when Mr. Edlin made a different proposition from the loan proposition that he had advanced? A. Yes, sir. He agreed to pay Desser and Garfield $150,000 for all the stock and their interest in the proposition and to pay Albert Ernest

$130,000 and he brought over two certified checks for that purpose.

* * * * * *

[5108] Q. Was there a time limit placed on the acceptance of this proposition? A. Yes, sir. They gave a certain time to accept, return the checks.

Q. Within that time did you, in fact, reject the deal? A. Yes, sir. Both Mr. Desser rejected the deal and Colonel Ernest rejected the deal.

Q. Well, Mr. Boykin, thereafter, did you have [5109] any dealings with Mr. Desser regarding his making a payment on the mortgage? A. I did.

* * * * * *

He said, "What had Edlin offered you as a payment down on this proposition?"

I said, "$125,000."

He said, "Would you accept $100,000 from me and let me go on and not foreclose?"

I said, "I will be delighted to do it."

* * * * * *

When I went to go, Mr. Desser said, "Frank, I would like to do this this way. I would like to pay you $25,000 now, and $25,000 in thirty days and thirty days and thirty days, and not pay the $100,000 now."

[5111] That is when it blew up again.

Q. What did you say to him? A. I did not say anything then. I just got up and walked out. I had been oh, well, been fooling with him for four or five years, you know, and promises and promises and never any of them come through. There was a banker to give him the check and every time I made a deal with him, he wanted to change it just a little, and get just a little better deal.

Q. Now, thereafter, did you, in fact, make a deal with Mr. Edlin's group? A. Yes, sir.

Q. Can you fix that in point of time? A. We had been practically agreeing if anything happened, all the time—I think this was in April, Mr. Williams—April, 1961—I think that is when it was.

Q. Now, what did Mr. Edlin agree to pay? A. Provided we changed the mortgage to the way he wanted it, and what else—extend the time, that he would let me keep not only the pine timber on the land, but the hard wood, too, and the gravel. He would have a right to use whatever sand and gravel needed in his housing and in his development. And that he would pay up the interest on the mortgage of $125,000. And that he would pay the expenses of foreclosing the [5112] mortgage, which was pretty rough, the foreclosing.

* * * * * *

Q. And did you make a deal with him on the Brooke, Virginia tract? A. Identical. The same time, the same night and the same moment that we made it on the Waldorf tract.

Q. And what were the terms of the deal on the Brooke, Virginia tract? A. Our price on the Brooke, Virginia tract was $4,250,000. I showed him a contract I had made with a developer, Mr. Sigmund Pines, and showed him the maps [5113] and the drawings and the marina, the plans that Mr. Sigmund Pines had had his engineers to draw, but he never would agree to give but $3 million for the 5,000 acres and us reserve the timber and the gravel—for him to use all he needed of it.

Q. How long did you negotiate with him on this? A. At the same time I did but we reserved the timber which was worth $500,000. We had over 100,000 cords of pulpwood at $5 a cord.

Q. What did he agree to pay you for Brooke? A. $3 million.

Q. And under what terms? A. The same as the other property, $125,000 down and seventeen and a half years to pay the other at one per cent.

* * * * * *

[5129] By Mr. Williams:

Q. Taking you back, Mr. Boykin, to early 1961, was there a time when you had a conversation with either Mr. Edlin or Mr. Robinson about what we have referred to in this trial as the Dranow Treasury note? A. Yes, sir, it was Mr. Edlin.

Q. About when was that? A. Oh, that was soon after I met Mr. Edlin.

Q. Now, thereafter, did you have a conversation with Mr. Robert Kennedy regarding this subject? A. Yes, sir, I did.

Q. Where did that conversation take place? A. My wife and I were having dinner with the Kennedys in their home. Quite a group was there. I remember the Secretary of the Treasury and his folks were there and after dinner the subject of Jimmy Hoffa came up, and [5130] Mr. Edlin had told me about buying a United States Treasury Note for $80,000—a $100,000 Treasury Note—and he said later he found it was a stolen treasury note and they were suing him for it. He was having a terrible time. He had to go to Miami about it. He happened to tell me about it when we were driving over the properties.

After dinner, when they were talking about Jimmy Hoffa, I just casually mentioned this to the Attorney General, Robert Kennedy, and told him what Mr. Edlin had told me.

He asked me if he could send a man up to my office to get more information on this. I told him that I did not know—that was all I knew but that Congressman Johnson represented this group of bankers and people and that I was sure he would be glad to help, too.

So, that is what happened there, Mr. Williams, and he said he would like to send a man up to get the information.

Q. Now, at the time that you told Mr. Robert Kennedy about the Dranow treasury note, did you, Mr. Boykin, know that Mr. Edlin was under indictment? A. I did not.

* * * * * *

[5133] Q. Now, what did you do when you found out that

Mr. Edlin was under indictment? A. I called Congressman Johnson.

Q. What conversation did you have with him? A. I asked Tom to hurry and come up to my office; I had something pretty important to tell him. He came right up. I told him, and he said, "Well, let us get Mr. Edlin as quick as we can and confront him with this [5134] information."

And either he or I called and Mr. Edlin and Mr. Robinson came right on up. I was trying to get the Dranow matter for them at that time but I had not gotten it.

That was about two weeks after we had been out to the Attorney General's house.

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[5136] By Mr. Williams:

Q. Had you asked for a memorandum on the Dranow treasury note? A. Yes, every day, and every night from the day Mr. Sheridan came up to get it. The Attorney General sent him up to get the information that I had given him about this Dranow note that Mr. Edlin had told me about.

[5137] Q. Did you finally get a memorandum on the Dranow treasury note? A. Well, we had a little fuss about it, and—may I tell you about it?

Q. Did you get it? A. Finally.

Q. When did you get it? A. I got it that night.

Q. What did you do with it? A. Sent it down by messenger to the Department of Justice, and I never read it. I had had an awful lot of trouble in getting it because they did not want to give me this note because Mr. Edlin said he did not want to have Jimmy Hoffa and Bob Kennedy both against him.

I kind of sympathized with him.

Q. I am going to hand you, Mr. Boykin, an exhibit which has been received in evidence, marked Government exhibit

90 and ask you whether that is the memorandum you received, or a thermofax copy of it? A. Didn't I send a letter with it? Yes, sir, that is my writing on there, to Herbert Miller. Yes, sir, that is it. I never read it.

* * * * * *

[5138] Q. Mr. Boykin, at the time that you sent the memorandum to the Department of Justice, had you yet seen the Attorney General regarding the Edlin indictment? A. I had not.

Q. To whose attention did you send the memorandum regarding the Dranow note? A. Whose what?

Q. To whose attention? A. Mr. Herbert Miller. I think I sent two. I think I sent one to the Attorney General and one to Mr. Miller.

* * * * * *

[5139] Q. Mr. Boykin, did you know at that time that a memorandum regarding the Edlin indictment was in the process of being prepared? A. I did not. I had never heard about it until that day when I am telling you about now, when we did get the memorandum.

Q. Did there come a time when Mr. Edlin, or Mr. Robinson explained to you the circumstances regarding the indictment pending in Maryland? A. They did it that very day.

Q. What was said? A. Well, Mr. Edlin told me about the Chicago proposition. I think he said it happened 30 years ago when he was a young man, and he told me the case and the cause and so forth and so on.

(Mr. Genn) Your Honor—

(Mr. Williams) Talking about the Maryland indictment.

(Mr. Genn) The same objection.

(The Court) Overruled. This is a conversation a [5140] day or so before he went to the Attorney General.

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[5148] By Mr. Williams:

Q. Now, Mr. Boykin, on March 25, did you go to the Department of Justice? A. Yes.

Q. And did you go with Mr. Johnson? A. Yes, sir.

Q. Did you see the Attorney General on that day? A. I did.

* * * * * *

[5149] Q. And what was said to the Attorney General? A. Well, he came out in the hall to meet me and Mr. Robinson was with us, also, with Congressman Johnson and me, and we spoke and I introduced him to Mr. Johnson and told him that he represented the properties, the Edlin group, and then I asked him about Ethel and the children and his father, and he asked me about Ocella, my wife and then we went into his office. We carried the plans and the pictures and the maps, the drainage maps and all the maps.

Mr. Robinson had two arm's full. We took them into the Attorney General's office. Mr. Johnson talked to him about the indictment. For sometime they talked about that. I did not say anything about that. I am not a lawyer as you know. Then I told him about the great development that we had hoped to put on and that Mr. Edlin's people had agreed to finance to the tune of $2,300,000 and about the Brooke property.

I showed him the pictures, the very beautiful drawings of Boykin City, that the architects had prepared. That was what they were going to name the city in Maryland that joins Waldorf, Boykin City. I showed him the waters and told him how much waterfront we [5150] had—we had fifteen miles in Virginia, and all about it.

I did not talk to him about the indictment except to tell him that we were told that it was a faulty indictment and that we would like to have the Department of Justice review the indictment to see if it was a faulty indictment.

Q. Did you ask the Attorney General to quash the indictment? A. Oh, no, no, he told you that here. I never asked

him anything but what I told you, to review it to see if it was a faulty indictment, which they all thought it was. And I told him that.

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[5155] Q. Did you have thereafter any meetings with Mr. Miller? A. Yes, a good many.

Q. What was the subject discussed at those meetings? A. Most of it was about the Hoffa and Dranow note. I guess maybe 75 or 80 per cent, but they were about the same thing. I did not at the first meeting, when we met him, we did not get to go into details because we had been there a long time, and at the second meeting Congressman Johnson talked about the law and the indictment, and I talked to him about the development of the land and showed him these same pictures you had and the maps, and told him all about it.

Mr. Miller was a Maryland man. He was very [5156] much interested in the development in Maryland.

Q. Did there come a time when Mr. Miller made any disclosure to you concerning Mr. Edlin's prior record? A. Yes, sir.

Q. What happened on that occasion?

(Mr. Genn) Same objection.

(The Court) Overruled.

(The Witness) He asked us to come down that he had some information that he wanted to give us.

Congressman Johnson and I went down. He had a memorandum there, a file about six inches thick, and he said that the record showed there that Mr. Edlin had been convicted two or three times, and, of course, we were flabbergasted and we told him that this shocked us and we had no more to say. We got up and left and went back to the Capitol, Mr. Johnson and I.

By Mr. Williams:

Q. What did you do when you went back to the Capitol? A. We called Mr. Edlin. Tom called Mr. Edlin and asked him to come over at once and he and Mr. Robinson did come over.

Q. What happened then? A. Well, we went into this. We were very much [5157] upset naturally, Mr. Williams, and we told Mr. Edlin that we thought it was terrible that he had not told us about this. He said it was not a bit of it true. That he had served a term many years before, about thirty years before, and all of the rest of this was not true and would I allow him to use my telephone.

I told him I would. He put in a call to Chicago. Used his credit card and called someone out there in the government and talked to him. He did not get him right then. The man was out but said he would be back in fifteen minutes.

About fifteen minutes, the call came in and I answered the phone, handed it to Mr. Edlin and he talked to the man five or six minutes and he says, "Will you tell that to Congressman Boykin?"

I talked to a man, he said his name was Meyer, and he had been the man that had looked after Mr. Edlin when he was having his trouble and said it was not true, that Mr. Edlin had not served any two or three terms. He was his parole officer.

He said he had served one term a long time ago, and he talked about it at length and I asked him if he would tell that to the Department of Justice, and he said he would be glad to. That is all I said and handed it back to Kenneth Edlin who was sitting on my right and they [5158] talked at length. That is all that happened then.

Q. What happened thereafter? A. Well, Mr. Edlin and Mr. Robinson and Mr. Johnson brought Mr. Meyer into my office and they asked me if I would go down and introduce him to Mr. Miller, Mr. Meyer, the parole officer.

I told him I would be glad to and we all went down.

Mr. Robinson went down with us. We introduced him to Mr. Miller and Mr. Miller told Mr. Robinson to take him down the hall where the man would interview him.

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Q. Mr. Boykin, did you have any further conversation with Mr. Miller?

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[5159] A. Oh, yes, a good many, I think. I cannot tell you the exact dates but he would call us. He was very much interested in the Dranow note and he wanted Mr. Edlin and Mr. Robinson to go to Miami and testify against Dranow and Hoffa before the Federal Grand Jury, and it took up an awful lot of time getting that arranged.

I will tell you about it. First, Mr. Edlin and Mr. Robinson went and the day they got there, the grand jury adjourned. They paid their own way, they told me.

Q. Just tell us what you know. A. All right. And then Mr. Miller called me back and said that he would see that that did not happen again and would they go again.

I said "I will find out." They did not want to go. I doubt if anyone wants to go before the Federal Grand Jury. But they said they would go. And they had had some trouble in their home. Mr. Edlin had to call the police about a threat to kill him and so forth. So they said they would go. We arranged for them to go. Mr. Miller. I had him down there, and they said they would go.

Mr. Robinson's grand father died in Illinois the [5160] day before they were to go and he had to go to the funeral, so they did not go that time. Then we had to put in three or four visits to Mr. Miller. None of them wanted to go and did get them to go the third time and they testified before the grand jury in Miami, Florida, so I am told, by these gentlemen and also by the Department of Justice.

That took up about two weeks, Mr. Williams, getting that arranged.

* * * * * *

[5166] Q. Now, at any time during your conversations with the Attorney General, Mr. Kennedy, did you ask him to dismiss the case against Mr. Edlin? [5167] A. Absolutely no, and neither did Tom Johnson, or anyone else and Mr. Edlin never asked us to do that. He wanted it reviewed and that was all. I had been doing that for 28 years.

Q. At any time prior to this date had you asked Mr. Miller, the Assistant Attorney General, in charge of the Criminal Division, to dismiss this case? A. Of course not.

Q. At any time had you asked him to show any consideration to Mr. Edlin other than was called for by the merits of the case? A. Absolutely, we only asked him to see if it was a bad or faulty indictment.

Q. Did you at any time ask that the trial of the case be delayed? A. I did.

Q. When was that? A. The last time I was there, I told him I understood from Congressman Johnson that he had been told that they were going to go ahead with the prosecution. I asked him if it would hurt anything, any way, shape or form, if Mr. Edlin were given thirty days to finish up a deal he had on to sell this property that I held this mortgage on to some people that were going to develop it [5168] and if it is not out of line, if there was not anything in the world that would be hurt, Mr. Edlin would be right there, I would appreciate his giving Mr. Edlin thirty days.

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[5172] (In open court.)

By Mr. Williams:

Q. Was the case, in fact, to your knowledge, continued or was it not? A. I beg your pardon. I could not hear you.

Q. Was the Edlin case continued or was it not? A. It was not.

* * * * * *

[5216] By Mr. Tydings:

Q. At the time negotiations began, between Mr. Edlin and his group and Mr. Desser and his group in January of 1961, about the possible financing of the Desser interest, or the refinancing of the Desser interest in the Waldorf property, at the time those negotiations began Mr. Edlin also put out feelers about his [5217] interest in perhaps acquiring the property at Waldorf in the event the renegotiations for any financing for Mr. Desser fell through? A. He did not put out feelers. He talked to me day and night about it, and if he could not get to do the other, he wanted to buy it and said he would foreclose if I would and I was trying to get around to foreclosing. It cost me $360,000 to foreclose that property if I paid the regular thing and I also have to pay tops, it looks like. Yes, sir, I pay twice as much as anyone else including the young lady here making my record. I am glad to do it though, because they are doing a grand job.

By Mr. Tydings:

Q. So that during the period of the negotiations— A. A little closer, please, I just cannot hear you.

Q. During the period of these negotiations, you were also in effect negotiating with Mr. Edlin in the event that the Desser deal fell through, for Mr. Edlin to acquire the Charles County property, were you not? A. I was doing that and I had three other people I was working with to try to sell it because it looked like he was going to fall down on his payments to me which were four or five years old and paid interest one time in all that time but I was trying to help him.

[5218] You heard me tell Mr. Williams this morning if I agreed to accept the $100,000 when that man had a check to give me for $125,000.

Q. And at this time you knew that Mr. Edlin was the principal in the negotiations if it were necessary for him or his group to purchase the Charles County property did you not? A. I knew that Mr. Edlin told me he was the adviser and banker for a group in New York, Chicago and Miami that had money running out of their ears. And I wanted to spend it in Waldorf Maryland on this beautiful tract of land at Waldorf, 8,000 acres that I had been trying to develop so hard, which I am going to do. I am out of Congress now, you put me out so I am glad of it. Finest thing that ever happened.

(The Court) Were you defeated in the general election or the primary?

(The Witness) This thing here. I won the general election and then we had to run State at Large and every day the papers come out and said I stole ten million dollars from the savings and loans. I never heard of a savings and loan.

(The Court) What was the date of the election?

(The Witness) The date of the election, it was last year, Judge. All of it, you know. The runoff was [5219] last November.

(The Court) The runoff was last November?

(The Witness) Yes, sir.

Judge, I won in my District but they lost a Congressman in that District, and we all had to run at large.

By Mr. Tydings:

Q. Congressman, as long as you are in on this, is it not a fact that your runoff defeat occurred before the indictment was returned by this grand jury for the District of Maryland? A. Yes, I was indicted before I went over there to see you. However, the papers in screaming headlines were saying about the "Crooks," and I had stolen this land and stole the money and the savings and loans, women and children and you know, of course, that is paid up now in full. Now, do you know it, the savings and loan is paid up in full—you knew that?

Q. I heard the testimony here. A. You heard the testimony. I would find out about that. It is certainly important. Judge, I paid $685,000 on that and never got but $125,000 from Mr. Edlin just so no children would not lose no money on me.

Q. How much did you pay to pay off these savings [5220] and loan asociations? A. I let them take my land and gave them the whole $10 million worth of land. I did not want the savings and loan or anyone to lose any money on account of me because no one has ever lost a copper on me and they used $600,000—some odd of this cash money to pay from that savings and loan and we never got but $125,000 and that was not from the savings and loan, it was from a certified check on a bank and I never heard of a savings and loan when I met Mr. Edlin. He told me he represented all these banks in New York, Chicago and Miami, and so did Mr. Robinson.

Q. Now, Congressman, I want to call to your attention— A. I can not hear you.

Q. I want to call to your attention, the testimony—

(The Witness) Mr. Weiner, you were talking to me? I can't hear you.

(Mr. Weiner) No, sir, Mr. Tydings is.

(The Witness) Yes, sir.

(The Court) I think we had better take a five minute recess.

(The Witness) No, I do not need it. Please, sir, let's get through.

(The Court) We must take one more recess [5221] before we finish anyhow.

(Mr. Tydings) I need it Congressman.

(The Witness) I sure don't.

(Brief recess.)

(The jury is absent.)

(At the Bench.)

(Mr. Genn) I would like to move to strike the last series of responses. I think, actually, Your Honor, it was one continuous response by Congressman Boykin as first including prejudicial answers much of which goes far beyond anything pertinent to the indictment.

(The Court) What parts are you taking issue with?

(Mr. Genn) Reference to savings and loan associations as to what sums were used or not used for associations; the fact that the entire statement is largely prejudicial and not pertinent nor relevant nor related to the period of this indictment.

(The Court) Do you have any objection?

(Mr. Tydings) I would like to have an opportunity to study it.

(The Court) The Court has called on Mr. Tydings and Mr. Williams and, of course, representatives of [5222] other defendants to say whether they have any objection to Mr. Genn's motion being granted in whole or in part. When I have received, or when I have heard from them after they have had an opportunity to read it, I will make an appropriate ruling and instruct the jury.

(In open court.)

(The Court) Bring in the jury.

* * * * * *

[5225] Q. As a matter of fact, Congressman, is it not a fact that after you received the $250,000— the two checks, [5226] each one for $125,000, you could not possibly lose on this transaction no matter what happened? A. I did not intend to lose. I would get that money and if I did not get the balance, I would foreclose. I, of course, would not lose. I would get my property back and I sold it to him too cheap.

* * * * * *

(Vol. 39 [5282]) (Mr. Williams) May I make a suggestion on that, Your Honor? First of all, this went into the record yesterday. I told Your Honor I had no intention ever to allude to this in any way. All that is going to happen is you are going to magnify it out of context by striking it. I am not going to make any reference to this in my argument or at any other time of this trial and I am sure no one else will.

(The Court) If Mr. Edlin wants to strike it, I will strike it.

(Mr. Tydings) I would like to say one thing, I intend to get the record clear with Mr. Boykin the first question I ask him on the stand, is the fact that he lost his primary election in May, five months before the indictment.

(Mr. Williams) Then let us leave it in.

(Mr. Genn) I move to strike it.

(The Court) I think that is immaterial so far as Mr. Edlin is concerned.

(Mr. Genn) There are prejudicial statements in there as well.

(The Court) If you will point out the prejudicial statements, I will try to rule on them, if you will just tell me what is prejudicial. It is beyond me why Mr. Boykin losing the election is [5283] prejudicial to Mr. Edlin.

(Mr. Genn) I stated that there are additional statements.

(The Court) If you will show me the ones you mean.

(Mr. Genn) If you will hear me, Your Honor, I will be glad to do it.

Something in reference to thefts, stolen million dollars. Certainly the inference is in the context of this.

(The Court) I agree with you that it should not be admissible against you and I will strike these volunteered statements on page 5219.

(Mr. Genn) 5218 and 5219.

* * * * * *

[5284] (The Court) I will tell you the jury to disregard those statements dealing with what Mr. Boykin had to pay back in 1962 as a result of the building associations.

* * * * * *

[5286] (The Court) Members of the jury, good morning. I am sorry to be so late starting but we have been arguing busily on evidence here. The particular letter No. 203 for identification which was marked yesterday, Government Exhibit 203, which the Court has agreed that certain sentences out of this letter may be read to the jury. Also at the motion of Mr. Genn, I [5287] instruct you not to consider as part of the evidence in the case against Mr. Edlin any of the statements volunteered by the witness on the stand with respect to the money he had spent in 1962 and after, as a result of any contracts made by any building associations or developer.

That is in the case with respect to the other three defendants but is not to be considered for or against Mr. Edlin.

Now, Mr. Tydings, if you are going to do anything with 203, I have marked with specific check marks what is in.

(Mr. Tydings) I think I have them marked.

(The Court) All right.

* * * * * *

[5294] Q. I want to show you Government Exhibit No. 204 for identification and that is a letter from you, is it not, to Mr. Austill Pharr, president of the First National Bank [5295] of Mobile, Alabama dated December 18, 1961, and I want to call your attention and ask you whether or not--

(Mr. Genn) If the Court please, I object as far as this defendant is concerned, as to anything beyond December 8.

(The Court) The letter I have not seen it. Certainly no paper offered as an admission by Mr. Boykin, I do not see how it could be admissible against Edlin. Are you offering it against Edlin?

(Mr. Tydings) No, I am not offering it against Mr. Edlin.

* * * * * *

[5309] Q. Now, Congressman, you knew, did you not, that [5310] during the spring and the summer and the fall of 1961, during the time that these contacts and the visits were made with the Attorney General and the Assistant Attorney General, that Mr. Edlin was trying to swap off his criminal case here in Maryland in return for providing alleged information about Hoffa, Dranow or the stolen treasury note? A. I did not know it.

Mr. Edlin asked me to get his case reviewed.

(Mr. Genn) I object, if the Court please, as to mental impressions.

(The Court) I think the question assumes——strike the question and strike the answer.

(Mr. Tydings) No, if Your Honor please, I am prepared to follow this up right now.

(The Court) It is all right if you follow it up but you asked a question without showing any basis for it which assumed a fact not in evidence, and you cannot ask a question which assumes a fact not in evidence.

Now, if you will get the fact in evidence, or if you offer to follow up by proving it, you have a different problem.

(Mr. Tydings) All right.

(The Court) So, I strike the original question and answer and you may ask another question.

[5311] By Mr. Tydings:

Q. Congressman Boykin, when you appeared before the

Grand Jury, did you not testify— A. That is your Grand Jury?

Q. —at page 49, that is right, the Federal Grand Jury, in response to the following question:

> "Q. What did Mr. Edlin and Mr. Robinson hope would be accomplished by the Attorney General in the Department of Justice, taking the case under advisement and studying it."

(Mr. Genn) If the Court please, I am going to object to this. This has nothing to do with the specific testimony. This is impeaching as to some other fact and trying to bring in an assumed fact by referring to other evidence not pertinent to this indictment. I think it is not admissible.

(The Court) Objection overruled. Go ahead.

By Mr. Tydings:

Q. Let me read for you again, Congressman, before we were interrupted. Page 49, the Federal Grand Jury testimony:

> "Q. What did Mr. Edlin and Mr. Robinson hope would be accomplished by the Attorney General and the Department of Justice taking the case under advisement and studying it? [5312] A. They were trying to swap off on Hoffa for that deal. I don't know, but neither one of them ever talked to Bobby, to Bobby Kennedy."

(Mr. Williams) Read to line 22.

(The Court) Just take time. Mr. Williams, are you asking, Mr. Tydings, whether that is true? If you are reading it as an admission by Mr. Boykin without asking him whether it is true, it is not admissible against Mr. Edlin.

Are you asking him whether it is true or not?

(Mr. Tydings) Let me continue, Your Honor.

By Mr. Tydings:

Q. (Reading.)

"Isn't that true that what Mr. Edlin and Mr. Robinson hoped would be accomplished by the Attorney General?"

(Mr. Williams) I think he should read the whole colloquy down to line 22.

(Mr. Tydings) I will read everything that Mr. Williams asks me.

(Mr. Williams) Don't say it, do it.

(The Court) He can cross examine and if he does not read it all, you can do it but he can ask him question by question. He does not have to read the whole thing.

[5313] He can ask him whether what he said is true, and then he will ask the rest, or if you want to read the rest, you can do it, either now or later. Go ahead, Mr. Tydings.

By Mr. Tydings:

Q. Just a moment, Congressman.

Now, is it not a fact that that is what Mr. Edlin and Mr. Robinson hoped would be accomplished by these visits to the Department of Justice? A. No, they hoped that if they found the indictment was not good—Edlin told me that all he wanted was a review. I told you this before and that is all he wanted and that is all Congressman Johnson and I ever asked the Attorney General. They were asking us to do things, ten times more than we were doing for them.

More of these trips were to help them and get these men to go before the Attorney General. They must have had confidence in them. They wanted them to go to the Federal Court and swear against them on this deal, which they did do. They went three times.

Q. You deny then— A. Yes.

(Mr. Tydings) Mr. Williams, I will be happy [5314] now to read the balance of the page or any part.

(Mr. Williams) Just to line 22, Mr. Tydings, if you will.

(Mr. Tydings) All right. (Reading)

"Q. But they talked to you and to Congressman Johnson? A. Yes, they talked to me.

"Q. What did you think they hoped to accomplish? A. They were talking 'way off beyond, and how they were angels.

"Q. What were their highest hopes? A. He said he didn't mind being tried and he would come clear.

"Q. Were these visits to the Attorney General materially your idea and not Congressman Johnson's? A. It could have been either one. It was about as much mine as it was Tom's."

(The Court) Now, let me get the evidence point straight. What Mr. Boykin said to the Grand Jury as Mr. Tydings read it to him, is not admissible against Mr. Edlin. Do you wish to strike the witness' answer also?

[5315] (Mr. Genn) I thought it was offered with respect only to credibility and I do not think it is admissible.

(The Court) Then, you can also disregard his answer with respect to Edlin.

Now, I did not understand that Mr. Boykin questioned that he had said that to the grand jury with his explanation of his condition. Is that correct? He did not deny that he said to the grand jury what Mr. Tydings read?

(Mr. Tydings) Well, sir—

(Mr. Williams) He said, Your Honor, that is what he said to the grand jury.

(The Court) So, it is admissible in the Boykin case and, since the other two defendants have not objected, it may be considered in their case, also.

* * * * * *

[Tr. 5319-5324]

By Mr. Doub:

Q. Mr. Boykin, when you met Mr. Edlin in January of 1961, you were tremendously impressed with him, were you not? A. Yes, I was. He is a genius. He is one of the greatest financiers I ever saw and the best traders. I was impressed with him. If he had been let alone, I think he would have made a big success of it.

Q. Do you remember in February or about February, going to Mr. Johnson's office and he had a big stack of mortgages on the desk in front of him, and he was working on them? A. I just told Mr. Tydings about it.

Q. Is that the occasion you are talking about? A. It was the Cassell Development.

Q. That was the Cassell Development, was it not? A. Six hundred and some abstracts—half of them were wrong.

Q. Do you remember in early May, 1961, a meeting with Mr. Edlin, Mr. Robinson, Mr. Johnson, in which Mr. Johnson discussed with him the fee that he would be paid for the foreclosure case? A. Yes, sir, $25,000.

Q. Is that what they agreed on at that meeting? A. Mr. Johnson wanted more. I think it was $40,000, and he said he would not give but $25,000 for foreclosing.

He said if he would do some other work, he would agree to that. That was the agreement, $25,000.

Q. Was anything said about $10,000 of the $25,000 being paid promptly? A. I do not remember.

Q. You do not remember? A. No, sir.

Q. Now, in three of the letters in evidence which you wrote shortly thereafter to the people like Holland, Pharr, you said that the foreclosure case was costing $25,000? A. Yes, sir.

Q. Is that the $25,000 that you were referring to? A. Yes, sir.

Q. That was agreed upon? A. Yes, sir, I was trying to tell my auditor, Mr. Doub—I was very much worried about what it was going to cost to foreclose it. Some of the people I was talking to wanted 6 per cent which would be $360,000. That is the reason I gave such good terms and so long to them.

Q. Louder. A. To keep from paying that on the foreclosure. And I was just trying to get my money for my land that I brought up money from Alabama and bought and paid for. We owed nothing on it.

Q. Now, you testified on direct, Mr. Boykin, that from January, 1961 to February, and March and April, there were a lot of meetings, to use your words, a lot of meetings with respect to the proposed loan from—a loan to Desser & Garfield in the amount of $2,300,000? A. That is right.

Q. Now, were some of those meetings held in Mr. Lykes Boykins' office? A. Yes, sir, and some of them I did not attend.

Q. Some of them were in Mr. Desser's office? Do you know? A. I do not think so, no. I do not remember.

Q. Were any of them in your office? A. No.

Q. Were any of them in Mr. Johnson's office? A. Yes.

Q. They were? A. Yes, sir.

Q. Do you recall whether Mr. Johnson attended any of the meetings in Lykes Boykin's office? A. Yes. sir.

He did not attend all of them, and neither did I. That is exactly the way I remember it.

Q. Do you recall making a trip with Mr. Johnson to meet with Mr. Ashby in Fredericksburg? A. No, sir, I did not go down there.

Q. You did not go down there? A. No, I did not go. I told Mr. Tydings yesterday I did not go.

That was a mistake in the letter. I made arrangements. I knew Mr. Ashby well, and my lawyer, Mr. Moncure.

Q. You did not go down with Mr. Johnson, then? A. No, sir.

Q. You did not? A. No, I did not go with anyone.

Q. Did you go with Mr. Johnson on a trip to see Mr. Moncure in Stafford, Virginia? A. No, I did not. I called up my lawyer, Judge Mudd, and told him I would appreciate—he had been my lawyer ever since I had been up here—if he would help Congressman Johnson out, and suggested that he take the foreclosing of it.

Q. Were you at a breakfast meeting on July 10, the date of this proposed public sale and foreclosure of the foreclosure of the $6 million mortgage with Lykes Boykin and Mr. Johnson? A. No, sir.

Q. You were not there? A. I was not there.

Q. Did you attend the meetings that continued thereafter in Mr. Lykes Boykin's office that day? A. I attended a lot of meetings. I am sure I did. I do not remember. I just do not remember.

(Mr. Tydings) Your Honor, I am going to ask for a five-minute recess at this time.

(The Witness) Fine, thank you, sir. I will just sit right here, Judge.

(A brief recess was taken.)

By Mr. Doub:

Q. Now, Mr. Boykin, I am just going to ask you two questions. A. Yes, sir.

Q. Wasn't Mr. Johnson offered a large commission on the resale of these properties, and he refused to take it?

A. Yes, he was offered 10 per cent, and he refused it. I was offered fifteen per cent and I refused it. Lykes Boykin was offered ten per cent and he refused all of it. Every one of us.

Q. As a matter of fact, didn't you feel, Mr. Boykin, that Mr. Johnson's compensation as agreed upon was too little for him? A. Yes, sir.

Q. And you even wished to pay him a commission, yourself? A. I offered him one.

Q. And he refused it? A. He refused it. Said he could not represent both sides.

* * * * * *

(Vol. 42 [5803]) Mr. Genn) Now, finally, Your Honor, so that I can conclude all of my motions, I would like to, for the record, renew the motion that I have made previously a number of times for a mistrial or severance in the case and I might add that on the grounds I have already stated and since the previous motion last I might state that I think there have been a number of other factors, too. There has been brought into evidence, for example, through Mr. Lykes Boykin and other individuals in connection with the Finneran transaction suggestions of further improprieties. I think there has been, I regret to say—some interjections by the Court. I think that counsel for the Government improperly suggested that evidence had to be conceded or to some extent stipulated to. I do not think that that is appropriate in the [5804] case and I think that for the reasons I have stated with constant repetition of matters which go essentially to character and for all of the reasons I have stated previously, I would like to renew the motion for a mistrial.

I might point out that most of the time that the Department of Justice at least 7 or 8 times or more, the same matters were gone over in spite of the fact that Your Honor said at the outset of this case that the spirit of Michelson must prevail, there should not be very much mention of this.

Let us get on to it and not mention it too often. When Mr. Meyer got on the stand, not only was the conviction mentioned, but the Corona matter was mentioned. It was repeated two or three times on direct and on cross. It was brought out on the Defendant's case.

(Mr. Tydings) Your Honor, we have hashed this over. It is getting late.

(The Court) Let him finish.

(Mr. Genn) I state for the record the same types of matters were re-hashed again in the defendant's case and for that reason I renew the motion.

(The Court) Denied.

* * * * * *

(Vol. 43 [5916]) Members of the Jury, the defendant Edlin has presented no defense in this case. He has presented no evidence to contradict the charges against him. He has produced no evidence to deny numerous statements made by many, many government witnesses. He has produced no evidence to deny the testimony of numerous witnesses of his various activities which clearly indicate beyond any doubt, members of the Jury, his guilt of the charges in this indictment.

* * * * * *

[5918-5919] (Mr. Genn) Your Honor, I would like to object to that portion of the argument which I think goes well beyond the scope of the indictment in this case. I do not think that the Government's argument is within the scope of the charges in this indictment of an attempt to defraud. I would also like to object to the statement made with regard to the Defendant Edlin as bringing no defense and no evidence as constituting a comment upon his failure to take the stand.

(The Court) He did not say that.

(Mr. Genn) He said he presented no defense and he presented no evidence, and I say that constitutes a comment

upon his failure to take the stand. I will also state that the argument in certain portions of it was excessively inflammatory and I object.

(The Court) Overruled.

* * * * * *

[Tr. 1669-1690]

ROBERT FRANCIS KENNEDY

a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Tydings:

Q. State your name for the record. A. Robert Francis Kennedy.

Q. Where do you reside, Mr. Kennedy? A. I live in McLean, Virginia. I come from Boston, Massachusetts.

Q. And are you the Attorney General of the United States? A. I am.

Q. And, as Attorney General of the United States, would you briefly outline your responsibilities and duties in that office? A. Well, I am responsible for the Department of Justice. The Department of Justice has approximately 35,000 employees.

We have under my direction the Immigration and Naturalization Service, Bureau of Prisons, Federal Bureau of Investigation, as well as all the legal work of the Federal Government. In that category we have the Lands Division, the Civil Division, Criminal Division, Internal Security Division and the Tax Division. We have 92 U.S. Attorneys' offices across the United States for which I have the responsibility.

Q. Prior to the time you were nominated and confirmed as Attorney General of the United States, had you ever met Congressman Frank W. Boykin? A. I believe I had.

Q. What sort of acquaintanceship, if any, had you had with Congressman Boykin? A. I had a brief social acquaintance. I knew Congressman Boykin and he had been a friend of my father's for some period of time.

Q. Now, I direct your attention to the spring of 1961 and ask you whether or not you recall a time when Congressman Boykin called you or your office and requested an appointment for himself and Congressman Johnson to meet with you? A. I do and I have had my recollection refreshed from looking at certain records of the Department of Justice but, after looking at those records, I remember that such a call was made.

Q. Did Congressman Johnson and Congressman Boykin come to your office in their official capacity as Congressmen of the United States? A. Well, they came, in my judgment, they were there as Congressman in the United States Congress.

Q. Now, to the best of your recollection, what occurred or what was the subject of that initial conference or meeting between yourself and Congressman Johnson and Congressman Boykin? A. The first meeting which I remember was a Saturday morning. I had had another meeting in my office and we stepped out of my office and went into another room and they had some maps and charts with them which showed a land development in Maryland. They were concerned about the fact that Mr. Edlin was then under indictment, that he was with a First Colony Savings Company, that he was under indictment and they felt that the indictment should not have been brought and that this matter should be reviewed by me, that if the indictment was followed through, that this would have a bad effect on the economy of Maryland.

Q. And how long did the meeting last, approximately? A. I could not tell you. My recollection is it was just for a short period of time.

Q. At the conclusion of the meeting, did you suggest or request a memorandum on the subject which they had dis-

cussed with you? A. That is my usual procedure and I believe that I did.

In any case, a memorandum was sent to me.

Q. What did you do with the memorandum or what was done with the memorandum? A. I forwarded it to Mr. Miller who was head of the Criminal Division.

Q. All right. That is Mr. Herbert J. Miller, who is the Assistant Attorney General of the United States and Chief of the Criminal Division? A. That is correct.

Q. Now, did Congressman Johnson indicate to you at this time, or at any subsequent meeting he had with you, that he had been retained or was being retained by Mr. Edlin or any of Mr. Edlin's interests? A. He did not.

Q. Did Congressman Boykin state to you at this time or at any subsequent time that he had a personal financial stake in either of the tracts of land being financed by Mr. Edlin or his savings and loan associations? A. Not to my recollection.

Q. All right; now, did either Congressman Johnson or Congressman Boykin visit you again, personally, at the Department of Justice in the spring of 1961? A. Yes, they did.

Q. And approximately what was the purpose of that visit, if you recall?

(Mr. Doub) What is the date of that, Mr. Tydings?

(Mr. Tydings) I show you government exhibit 108 for identification which was offered by Miss Jane Lahey, and to refresh your recollection, and ask you what was the date of that second meeting, Mr. Kennedy? A. The record shows that it was April 12, 1961 at 11:30 a.m.

Q. From the Government exhibit 108 what was the date of the first meeting? A. March 25, 1961 at 10:15.

Q. What was the date of the first telephone call? A. Wednesday, March 22, 1961. Should I read the notation?

Q. You can read the notation. A. "Congressman Boykin of Alabama called. He and Congressman Tom Johnson of Maryland would like to come in and see you tomorrow, if possible, before the House adjourns on Tuesday. I am to call them in the morning. It is a personal matter."

Q. Now, to the best of your recollection, what took place at the April 12th meeting? A. Again, we went through the fact that Mr. Edlin was under indictment, that the adverse effect that this would have in Maryland, that this savings and loan company could have a very beneficial effect; if Mr. Edlin followed through on this indictment that it could have an adverse effect financially in Maryland.

I believe at this meeting, one of these meetings during this period of time or during several of these meetings, it was brought out that there was going to be a development for Negroes; that this would be helpful in the problem of segregation; that Mr. Edlin was wanting to develop this Negro Housing Development here, and that this could be helpful. I think that is generally, along those lines.

Q. Did you request Mr. Herbert Miller at any time to meet the two Congressmen? A. Yes, I believe that he came to this meeting on April 12. I do not know if he was there at the beginning but I believe he was there during the course of the meeting. I believe that it was Congressman Johnson, Congressman Boykin and Mr. Miller and myself.

Q. All right. Now, during this period did Congressman Boykin ever suggest to you that Mr. Edlin could be of assistance to the Department of Justice in a pending investigation? A. Yes, he did.

Q. And what was Mr. Boykin's statement to you on that? A. I believe he had talked to me earlier. Perhaps at some social function, and I can not recollect that exactly but at some time he told me that Mr. Edlin had information regarding a $100,000 stolen bond and its connection with Mr. James Hoffa who was the International President of the Teamsters and I believe Mr. Dranow who was also under investigation in connection with it. That Mr. Edlin had some very

valuable and helpful information; that we should contact Mr. Edlin.

Q. And did you give any instructions to any one? A. I forwarded that information to Mr. Miller and to also, I believe, Mr. Walter Sheridan, who was working on the matter.

Q. Now, directing your attention to the early fall of 1961, were you visited again by either Congressman Johnson or Congressman Boykin at that time? A. I had told the Congressman that this matter was being handled by Mr. Miller and that the contacts should be with Mr. Miller and thereafter, after the meeting on April 12, 1961, there were numerous contacts and conferences with Mr. Miller in connection with this matter. And then I heard—should I speak from this?

Q. Did Mr. Miller reach any decisions in the late summer of 1961 regarding the merits? A. He had just become head of the criminal division and therefore had to examine a great number of matters, and it is my understanding or my recollection now that by examining this subject by the end of the summer, he had reached the conclusion that the indictment was well brought and that the case should go forward against Mr. Edlin.

Q. The indictment had been brought under your predecessor Attorney General, is that correct? A. That is correct.

Q. Now, directing your attention to the late summer or early fall, did either Congressman Boykin or Congressman Johnson have occasion to visit you again in your offices at the Department of Justice? A. Yes, they did.

Q. And what was the purpose of those visits?

(Mr. Doub) What was that date?

By Mr. Tydings:

Q. Would you read the dates? A. Should I read what preceded it, also, how the appointment was made?

Q. Yes, read those two, please, the telephone calls as well as the date? A. "Tuesday, August 29 Congressman Boykin called last night and today. Would like to come in and see you some time." Then "Congressman Boykin called again; wants to see you early tomorrow morning or some time Thursday." That was August 29. And then an appointment was made for August 31, 1961 at 12 o'clock noon.

Q. For Congressman Boykin? A. It says Congressman Boykin. I do not know whether both came in or just Congressman Boykin.

Q. When was the next contact made? A. Now, they came in on August 31 at 12 o'clock, Congressman Boykin, the notation says.

Q. Will you tell the jury whether or not any subsequent contacts were made by telephone and when they were, using the exhibit which you have in your hand? A. Well, there were some contacts between the time I met Congressmen Boykin and Johnson on April 12.

There was one on July 20 of 1961. "Congressman Boykin called the Attorney General. Congressman Boykin called and the Attorney General took the call."

Then the next notation is August 29, 1961 which I just read and then there was an appointment made two days later on August 31, 1961.

Then on Tuesday, September 5, 1961, there is a notation saying "Congressman Tom Johnson's office called to confirm an appointment he made with you for this Thursday. I don't have it in my book. Is it O.K. to go ahead and set one up? Mrs. Kiernan—Extension 5465."

Then there is an appointment that was made for Congressman Johnson on September 7, 1961 at 12 o'clock noon. Do you want me to continue?

Q. Go ahead and finish the rest of the telephone messages and appointments. A. Then there is a notation. "REMINDER: Talk to Jack Miller re. Cong. Tom Johnson of Maryland."

Then on September 7, as I believe I mentioned, on September 7, 1961 Congressman Johnson came to see me.

Then on September 8 the "Attorney General placed a call to Congressman Boykin. This took place at 10 o'clock in the morning. He was not in and the call was returned by Boykin at 10:05 a.m." Do you want me to continue.

Q. Yes, please. A. Monday, October 16, 1961 "Congressman Boykin called this morning and would like to come over with Congressman Johnson to see you today. He said to tell you it had something to do with Hoffa." And it gives the extension.

Then on October 17 Congressman Boykin, notation that Congressman Boykin came by October 17, 1961 at 3:15 p.m.

Then on October 18, 1961 there is a notation "Congressman Frank Boykin would like you to call him. He saw Jack Miller about the matter you discussed yesterday and wants to talk to you about this further."

That is the last notation.

Q. All right, now, to the best of your recollection what was the subject of the appointments and calls which you have just related to the jury in the summer of 1961 and the fall of 1961 when you were contacted by Congressman Johnson and/or Congressman Boykin? A. By the end of the summer of 1961 Mr. Miller had finished his review and had decided that there was a strong case—

(Mr. Genn) If the Court please, I am going to object to any testimony and move to strike this witness' testimony in reference to conclusions drawn by some other person.

(Mr. Tydings) And what did—

(Mr. Genn) That is not subject to cross examination.

(Mr. Tydings) If Your Honor please, we will follow this up, as Mr. Genn knows, with Mr. Miller.

(The Court) I will reserve my ruling. The hearsay statements from Mr. Miller would not be admissible unless they

were communicated to the Congressman or to some other of the defendants.

Do you propose to follow that up by showing that Mr. Miller's decision was communicated to the Congressman by this witness or by Mr. Miller?

(Mr. Tydings) By Mr. Miller, and the next question would be, what was the subject of the visit between the Congressman and the Attorney General in the fall of 1961?

(The Court) I will defer my ruling until we have the result of that, but remind me to make the ruling unless it is cleared up.

By Mr. Tydings:

Q. Do you recall what was the subject of the conversations and visits between yourself and Congressman Johnson and Congressman Boykin in the summer and fall of 1961? You may continue to answer the question that I have asked you previously. A. Mr. Miller had been reviewing this matter as to whether the Edlin indictment in the matter involving First Colony should be followed through. He had reached the conclusion that it was a strong case, and that it should be. He had had a meeting with Congressman Johnson, I believe, and had communicated this to Congressman Johnson.

Thereafter Congressman Boykin contacted me about that decision, and then we had these meetings on August 31, 1961, in which concern was expressed about the fact that we were going to go through with this matter, as far as Mr. Edlin was concerned.

(Mr. Genn) If the Court please, I am going to object to this response to the question as purely hearsay testimony with respect to the defendant, and I assume that the Court will—

(Mr. Tydings) This is a conversation between Mr. Boykin and the Attorney General.

(Mr. Genn) In respect to this particular defendant, I

suggest this is hearsay and not admissible at this time, nor connected up.

(Mr. Tydings) It is clearly in furtherance of the conspiracy.

(The Court) The last answer the Attorney General stated that concern was expressed or something like that. I think we better know who expressed concern and so forth.

(Mr. Tydings) Who expressed concern?

(The Court) I will reserve ruling again.

(The Witness) My best recollection is that at this period of time after the decision had been made and communicated to Congressman Johnson, Congressman Boykin contacted me about the decision. He came to see me. He said how effective he was and how much he admired Mr. Miller, but that he felt that this decision had not been a correct decision, and that he would hope that I would review it, and he expressed concern about the fact that we were moving ahead with the Edlin indictment.

I said I would see what I could find out about it. I had been working on a number of other matters during this period of time.

After this meeting on August 31st I asked Mr. Miller to prepare a memorandum summarizing the Edlin matter. I said to Congressman Boykin that I would be glad to see him again after I reviewed the matter personally with Mr. Miller again.

Mr. Miller prepared a memorandum within the next few days and I read that memorandum and then I believe I received a telephone call. The record shows I received a telephone call from Congressman Johnson to make an appointment and on September 7th, which was just a week after seeing Congressman Boykin, Congressman Johnson came to see me about this same matter. I said that I have reviewed the case and that in our judgment the case was a strong case.

He still expressed concern about it and felt that this whole

investigation and our pursuit of Mr. Edlin was motivated by prejudice, and that we should not proceed.

Q. And did you have a final meeting with Congressman Boykin? A. I might say, that I said that this was being handled by Mr. Miller in the Criminal Division, and that their conversations and conferences should really be held with Mr. Miller regarding this matter.

Q. All right. Now, during the year 1961, specifically, from March of 1961—

(The Court) I think I might make my ruling on Mr. Genn's objection. I will strike out the statement by the Attorney General, by this witness that Miller had told him that he thought it was a strong case, and only as against Edlin because he is the only one who had made that motion, and the evidence that they had decided to proceed with the indictment was clearly communicated and was the basis for these other acts to which the witness has testified.

(Mr. Genn) If the Court please, I think the jury should be cautioned with respect to that testimony as well. They have heard the testimony and simply striking out—

(The Court) I will tell the jury not to consider as part of the case against Edlin the opinion of Mr. Miller whether or not it was a strong case. Now, all of the rest of the testimony as far as I can see, is properly admissible.

By Mr. Tydings:

Q. All right. Now, Mr. Kennedy, during the period from March of 1961 through November of 1961, did either Congressman Johnson or Congressman Boykin contact you on any matter which was not concerned with the testimony which you have just given to the jury? A. No. I might say that I think that while they were visiting, we might very well have discussed other matters. The purpose of their visiting me was in connection with Mr. Edlin.

Q. All right. Now, Mr. Kennedy, directing your attention to November 6, 1961, did you receive a letter from Congress-

man Boykin in connection with the Edlin indictment on that date?

I ask that this be marked for identification.

(The Clerk) Government's Exhibit No. 122 marked for identification.

(Government's Exhibit 122 was marked for identification.)

(The Witness) That is correct.

By Mr. Tydings:

Q. And was a photostatic copy of the original letter made in the Department of Justice at the time it was received by your office? A. That is correct.

Q. And do you have the original letter of November 6, 1961? A. I do not have it, and we cannot find it in the Department of Justice.

Q. Have your secretary and office staff made a diligent search in an effort to find the original? A. They have.

Q. I show you Government's Exhibit 122 for identification and ask you whether or not that is a photostatic copy of the original letter? A. Yes, it is.

(Mr. Doub) May I see that a moment, Joe?

(Mr. Tydings) I am not offering it at this time. I am just identifying it.

(Mr. Tydings) If Your Honor please, at this time I will offer into evidence and ask that it be shown to the jury Government's Exhibit 108 heretofore marked for identification.

(The Court) Does anybody have any objections to it?

(Mr. Genn) As I understand, Your Honor, that is a summary which was prepared, am I correct? The secretaries prepared that summary.

(Mr. Tydings) That is correct. Miss Lahey testified last week as to the method.

(The Court) We have her testimony. Before admitting it, I want to know whether the defendants have any objection.

(Mr. Genn) I don't think there is a proper foundation, Your Honor, to show this is all or this is—

(The Court) You will have to review the testimony of Miss Lahey. I remember she said they were copies from those books which were here. The books, I believe, are still here.

(The Clerk) Mr. Tydings has them.

(Mr. Marion) The objection at that time was relevancy on the ground it was not shown for the purpose for these contacts and visits.

(Mr. Tydings) If Your Honor wishes to withhold your ruling, we will defer giving it to the jury until later.

(The Court) Counsel have asked about other visits which might be in the various books. The witness has used this to refresh his recollection without objection.

(Mr. Genn) For that purpose we have no objection, for the purpose of refreshing the recollection, but for the purpose of the proof of the document itself as to the specific calls, I think we do, or at least this defendant still objects.

(Mr. Williams) Your Honor, I didn't understand the witness to say that his recollection was refreshed with respect to the precise time reflected on these notes. I think it is a fair characterization of his testimony that he adopted the dates shown to him. I have no objection to this going in for that basis as far as the Defendant Boykin is concerned.

(The Court) The books have been here for comparison to show those were from the books.

(Mr. Williams) We are not permitted to look at those books.

(The Court) The only question open was whether there were any possible entries which would be relevant and material, as I recall.

(Mr. Genn) That I think it correct.

(The Court) Do you object to it going in?

(Mr. Genn) Not for that purpose. I thought that there was some question in connection with the books themselves.

(The Court) Is it offered for any other purpose, Mr. Tydings?

(Mr. Tydings) No, Your Honor.

(The Court) Then let it be admitted for the limited purpose stated.

(Mr. Williams) Would Your Honor state the limited purpose, please?

(The Court) The purpose that you stated and Mr. Genn adopted.

(Mr. Tydings) The purpose would be that the records of the Department of Justice show the visits and the calls made on the days indicated.

(Mr. Williams) That it was a document the Attorney General had before him when he testified.

(The Court) And that the books which were here show these entries without any indication that they do not show other entries.

(Mr. Tydings) And they were prepared by Miss Lahey.

(Mr. Williams) I do not know what the books show because we are not permitted to look at them.

(The Court) You were permitted to look at every entry on there. It is simply that the books show those entries without any question as to whether the books show other entries and I will rule on other entries as they come up on cross examination.

(Mr. Williams) That is my understanding.

(The Court) Is that the understanding of all the defendants?

(Mr. Genn) That is correct.

(The Court) They are admitted in evidence for the purpose stated.

(The Clerk) Government Exhibit 108 marked in evidence.

(Government exhibit 108 marked in evidence.)

By Mr. Tydings:

Q. Directing your attention to on or about October 17, Mr. Kennedy, does Government exhibit 108 indicate an appointment with you by Congressman Boykin? A. Yes.

Q. And do you recall—what is your best recollection for the purpose and subject of that conference or visit? A. Congressman Boykin was anxious that we contact Mr. Edlin for further information regarding this $100,000 bond. He thought that Mr. Edlin could be extremely helpful to the government and that we had not realized how helpful Mr. Edlin could be to the government and he was extremely anxious that we understand the fact that Mr. Edlin was available and willing to testify and to help the government in this matter and that this is my recollection of the purpose of that visit.

(Mr. Doub) What was the date of that, Mr. Kennedy?

(The Witness) October 17, 1961.

(Mr. Tydings) No further questions, Your Honor.

* * * * * *

[Tr. 1694-1762]

CROSS-EXAMINATION

By Mr. Doub:

Q. Mr. Kennedy, directing your attention to the first meeting you had with Mr. Boykin and Mr. Johnson at

which you testified you requested that they provide you with a memorandum of the Edlin Mail Fraud Case, it is undisputed that Mr. Johnson thereafter mailed you such, or sent you such a memorandum. You did not read that memorandum? A. I believe I did not.

Q. You have testified as to the substance of what said at that meeting and later meetings. Did you dictate a memorandum of what was said at each of those meetings? A. No, I did not.

Q. And as a matter of fact, you would have on an average as an Attorney General of the United States, many meetings and conferences a day, would you not? A. That is correct.

Q. So you did not intend to suggest that you were quoting exactly the language of either Mr. Boykin or Mr. Johnson in those meetings? A. That is correct. I think I made that quite clear.

Q. Now, when you referred to the fact that Mr. Johnson said that this development was being affected by the pending case against Mr. Edlin, that is, this development in Southern Maryland? A. Yes, sir.

Q. You do recall that? A. Yes.

Q. Then I think you said this case was prejudicing the interests of Maryland. Is it possible that he could have said it was prejudicing the interests of Southern Maryland? A. Very possible. It was people in Maryland or the area of Maryland, something like that.

Q. Yes. If any other written material was supplied to the Department of Justice by either Mr. Johnson or Mr. Boykin, you did not read that, did you, relating, of course, to this Edlin Mail Fraud Case? A. Well, I would have to look at the particular document to try to determine whether I read it or not. Some things I read and other things I did not. I believe the memorandum to which you referred, the original one was 90 pages long, or something like that. I am quite certain I did not read that.

Q. Are there not pending at all times in the Criminal Division in the United States Attorney's office—as criminal cases are subject to the supervision of the Criminal Division—are there not pending at all times about sixty thousand criminal cases or is it more or less? A. I think that is a high figure.

Q. That is a high figure; about 50,000? A. Well, there are many thousands. I would have thought that was a high figure, also, but there are a great number of criminal cases pending in the Department of Justice.

Q. You had never heard of this Edlin mail fraud case before it was brought to your attention by Mr. Johnson and Mr. Boykin? A. No, I had not. I might have read something about it in the newspaper but the name did not really mean anything to me.

Q. Did you follow that case closely enough to know that as a matter of fact, Mr. Edlin pleaded nolo contendere? A. Well, I knew of it at the time. It was reported to me at the time. I receive daily reports on cases and that was one of them.

Q. Is it not the policy of the Department of Justice that no plea of nolo contendere can be agreed to by the United States Attorney without the approval of the Criminal Division? A. That is correct.

Q. So the criminal division approved that plea in this case? A. I do not know what the—I know that the plea was—

Q. At least if it was handled in the ordinary course.

(The Court) The Judge may approve a plea without the consent of the Government. The Government does not have to consent.

(Mr. Doub) That is right, Your Honor.

(Mr. Tydings) Your Honor, I think we should point out to the jury that in any nolo contendery plea, regardless of the what the Department of Justice or the Attorney,

the decision is made in open court by the Judge and the Judge alone, and is made on the open record and can only be made by the Judge so the Department of Justice position is only recommending for or against.

(Mr. Williams) If Mr. Tydings is going to testify here, I would like for him to get on the stand and have an opportunity to cross examine.

(Mr. Doub) The point I was making, Your Honor, was that the United States Attorney may not consent to it without the approval of the Criminal Division under the Department's rules.

Now, Your Honor, of course, can overrule that.

By Mr. Doub:

Q. Mr. Kennedy, did you ever personally review this Edlin mail fraud case? A. Not all the documents. As I said, there was a memorandum that was furnished to me about the Edlin case between the meeting of August 31, 1961 and the meeting of September 7, 1961 because of the fact that there had been all this great interest in this matter.

Q. You never read the file on the case? A. I did not.

Q. Did you know that Mr. Johnson and Mr. Boykin did help the Department in persuading Mr. Edlin to go to Florida to testify in the Sun Valley case before the Federal Grand Jury which was investigating that Teamsters Union development? A. Well, I know of Congressman Boykin's interest in helping, having Mr. Edlin testify. He discussed it, as I have said here. He discussed it with me on a number of occasions.

Q. Did you know that either Mr. Boykin or Mr. Johnson attempted to persuade Mr. Edlin to give full statements to the FBI with respect to any connection he might have had with the Sun Valley Development or the Dranow note? A. I know that Congressman Boykin indicated that to me on a number of occasions, that he was attempting to have

Mr. Edlin give us all the information that he had. He would be helpful in that matter.

Q. Did you know that Mr. Edlin actually made two trips to Florida in connection with the grand jury investigation? A. I know that he appeared before the grand jury.

(The Court) On the matter that was just mentioned by Mr. Tydings. Rule 11 of the Federal Rules of Criminal Procedure provides a defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere. It is the uniform practice of this court when a plea of nolo contendere is offered by a defendant, to ask the United States Attorney whether the United States Attorney recommends or does not recommend the acceptance of the plea. The decision is the decision of the Court. It is not a matter of overruling an objection by the United States Attorney one way or the other. The Court asks the advice of the United States Attorney as to their recommendations. The Court does not always accept them. The Court sometimes accepts them.

By Mr. Doub:

Q. Mr. Kennedy, I believe the jury might be interested in having you tell them of the inscription on the wall just outside your inner office. Do you remember that?

(Mr. Tydings) What is the relevancy of this?

(Mr. Doub) "The Government wins its case whenever Justice is done." That is all.

(The Court) I take it that is a question. Do you wish to reply to that?

(The Witness) I agree. I think it belongs there, and I am happy that you brought it out.

(The Court) Members of the jury, and speaking also to the witness, the Defendant Johnson has requested permission also to cross examine the witness. It is unusual for more than one counsel to cross examine a witness and it is unusual though not unheard of for a defendant to

cross examine a witness when he is represented by counsel. At the last conference at the Bench that was the request that was made by Mr. Johnson to do so. That was presented to the Court. The Court has agreed that Mr. Johnson may cross examine the witness.

Mr. Johnson understands that he will not ask any questions of whether something happened unless he is prepared to follow up with evidence of himself or some one else that what he implies did happen and as I told you with respect to some of the documents, a matter of fact included in a question is not to be considered as fact contradicting a witness until evidence of that fact is established unless the witness agrees to it, of course.

Mr. Johnson, subject to what I have just said and to what was said up at the Bench, you may proceed.

CROSS EXAMINATION

By Mr. Johnson:

Q. General, when did you assume office as the Attorney General of the United States? A. January 21, 1961.

Q. When you assumed office, did you adopt any policy as to visitations on the part of Senators or Congressmen? A. No, not any particular policy.

Q. So then there was no policy prevailing with your department forbidding any Congressman or Senator discussing matters with your department? A. No, there was not.

Q. Is it not true, sir, that you do have many visits from Congressmen and Senators? A. I do.

Q. So the visits that Congressman Boykin and Johnson, or defendant Johnson made was not unusual to your department as far as visits were concerned? A. What do you mean by that?

Q. "That it was in keeping, was it not, General, with the policy of permitting Congressmen and Senators to visit and discuss with you matters pending in your department?

A. That is true, Congressman. I do not think that, since I have been Attorney General, I have had the number of visits and the amount of effort that was displayed in this case.

Q. Would it be correct in saying that after the institution of this suit you have had a lot fewer visits on the part of Congressmen and Senators? A. I would think that is probably true.

Q. General, I think that it is in evidence that Congressman Boykin contacted you for an appointment on March 25, 1961, is that not correct? A. He contacted me, as the record shows, on March 22 and the visit was on March 25.

Q. And in that request did it not state that it was a personal matter to be discussed? A. That is what the notation says.

Q. I recall your telling Mr. Tydings, however, that Congressman Boykin and Defendant Johnson appeared in the capacity as Congressmen? A. That is correct.

Q. Did you make that statement? A. Yes.

Q. Well, after reviewing your notes, would you say then that you were advised on March 22 at the time the appointment was made that it was a personal matter to be discussed? A. Well, that notation from the secretary never, to my recollection, came to me. But I would say that neither Congressman Boykin nor Congressman Johnson ever said to me that this was a personal matter, as they entered the room or in any other visitation, did they mention to me that this was other than in their capacity as Congressmen.

Q. Now the appointment was on March 25, 1961 when Defendant Boykin and Defendant Johnson visited your office? A. March 25, 1961, yes.

Q. And you recall that it was on a Saturday, was it not, sir? A. That is correct.

Q. Do you recall what, if anything, that was brought to your office at the time of the visit? A. I think that there

were maps and charts. I do not know if there was anything else.

Q. Incidentally, I believe there were some pecans brought to you, was there not, at the time, sir—from Congressman Boykin? A. I do not remember that.

Q. You do not remember that? A. There might very well have been some pecans but I do not happen to remember it.

Q. But you do remember a lot of charts? A. Maps or charts.

Q. But, General, were they not drawings of a proposed development in Southern Maryland? A. I cannot tell you exactly. I know there were a lot of papers and as I remember, there were some maps or charts. Maybe they were drawings.

Q. Do you recall what the name of the proposed development was as shown on those drawings or charts? A. No, I do not.

Q. If I refresh your recollection, would you agree that or say that it was termed "Boykin City"? A. I know that the term "Boykin City" was used during the course of some of the discussions. Now, I do not know whether that name was on any particular chart or not.

Q. Now, what further, would you describe to the jury how many charts, if you know, and what did those charts or drawings actually show? A. I just do not know, Congressman.

Q. Well, General, you looked at them, did you not? A. I think I did.

Q. Can you state whether it showed a proposed development as to housing, commercial area, buildings, golf course, country club and others? A. I have no idea, Congressman.

Q. You do remember seeing it? A. I do remember there were some papers and I do not remember much beyond that.

Q. You say papers. You were speaking of the charts or

drawings. How large were those drawings? A. I do not know, Congressman.

Q. Do you recall that they were so large that it was necessary to have somebody to bring them to the office? A. Well, I recollect that someone went and got them. I do not know if it was because they were large or you left them in the car. I recollect that someone was sent out of the office to bring something but I do not remember how large they were.

Q. So, then on the 25th of March, 1961, you do recall then Defendant Boykin and Defendant Johnson coming to your office with these charts or drawings and there was discussion in your office, is that correct? A. Yes, I believe so.

Q. Now, is it not true that the discussion generally dealt with a development in Southern Maryland? A. Yes, Congressman. I mean when you say Southern Maryland, again, as I think the attorney has pointed out, this really did not mean a great deal to me at that time. I had not followed the case and I had just become attorney general. There were a lot of other things going on. There were other meetings taking place in another office that same day so I had to step out of my own office.

As I have looked at the record since then, it is clear or apparent that it was probably Southern Maryland but I cannot say that I knew at the time what area it was or what exactly you were talking about.

Q. But you knew it was in Maryland? A. Yes.

Q. And at the time of the discussion did we not relate about the great unemployment going on in Maryland and elsewhere? A. You might have, I do not recollect it.

Q. Do you recall any statement being made that in this particular area it had been declared a distress area by the Government? A. I do not remember that, no, sir.

Q. Now, I believe on direct examination you answered a question by Mr. Tydings that you did not know of any per-

sonal interest Congressman Boykin had in this particular development, is that correct? A. I think I was asked whether there was any statement made by either Congressman Boykin or Congressman Johnson of the fact that they had any personal interest. I think the question was whether you ever stated—Congressman Johnson ever stated that he was receiving some fees in connection with your visits to me and I said you did not.

Q. You mean-- A. I think I was asked then whether Congressman Boykin had ever stated that he had any interest in this area and I said "to the best of my recollection, he did not."

I said Congressman Johnson did not. And to the best of my recollection Congressman Boykin did not.

Q. General, what—did you say that, on direct examination when Mr. Tydings mentioned about the fees being paid, atorneys fees? A. Or whatever the question was. Something in connection with payments of some kind.

(The Court) Would you like me to read by notes to clarify it? I will do it if counsel wishes. I do not want to interfere.

(Mr. Williams) I do not know what Your Honor asked.

(The Court) I have a note about these particular questions about which Mr. Johnson is asking.

(Mr. Williams) I think the Attorney General accurately stated what he stated earlier. I do not think it is necessary.

(Mr. Johnson) Yes, I will not press it.

By Mr. Johnson:

Q. Do you recall any discussion at the meeting as to how large a development was proposed in Southern Maryland? A. Well, I can tell you what my impression was, that it was large. But I do not know whether anything was stated at that time. Perhaps later meetings it was stated but I had the impression it was a large development going on.

Q. Would it be correct to say that it was as much as 8,000 acres to be developed? A. I have no idea.

Q. Was there anything in the conversation as to how this tract was acquired? A. I have no idea. I have no idea.

Q. Now, General, at the meeting, is it not true that Congressman Boykin spoke about the amount of taxes that he would pay if this development became a reality? A. I do not remember, Congressman.

Q. General, do you remember a statement that Congressman Boykin would pay in excess of $1 million in taxes, and you said that the Government needed it? A. I do not remember that.

Q. You do not remember anything about taxes? A. I do not.

Q. Do you recall him stating that he had been accumulating this land for a long period of time? A. I do not remember that, Congressman. As I say, in complete fairness to Congressman Boykin, and the answer to the question from Mr. Tydings, I said that to the best of my recollection in connection with this whole matter.

Now, it is possible that some of these matters that you are discussing were brought up. As you are bringing them up here, I do not happen to remember them.

Q. Now, do you recall that in the discussion that a name "Desser & Garfield" was mentioned, as developing or endeavoring to develop this, that it was a question of financing? A. No, I do not.

Q. You do recall that the name Edlin arose and First Colony Savings and Loan, is that correct? A. Well, even the name did not make such sense to me at the time. As I look back on the other visits that occurred, it became clear to me that the individual in whom you, Congressman Johnson and Congressman Boykin, were interested was Mr. Edlin.

Q. General, the purpose centered, did it not, in the con-

versation to promote this development in Maryland, did you not gather that from the conversation? A. I gathered, from the conversation, that you were interested in doing something about Mr. Edlin's indictment.

Q. And why? A. Because, as I have said earlier, because it had an effect—if the indictment went through it would be bad publicity and it would have an adverse effect on this development.

Q. In the discussion was anything said that it interfered with the financing of this project? A. Well, as I said, in its future development and I assume that that meant that the financing would be more difficult if the prosecution of Mr. Edlin went ahead.

Q. Now, in the course of conversation, did you hear defendant Johnson say that neither Congressman Boykin nor defendant Johnson were there to seek any favors from you, to interfere in any way with the pending criminal cases, to which you replied, and I quote "Of course, I know that"?

(The Court) Now, again—

By Mr. Johnson:

Q. I ask you if that was your conversation and your reply?

(The Court) What are you quoting from? Quoting from the—

By Mr. Johnson:

Q. General, I will restate it if you want me to. I will withdraw it.

(The Court) Because I have to renew the warning that I gave you at the time that if you are quoting from some document, it must be in evidence or must be produced to put it in evidence.

The witness is entitled to know what you are quoting from.

(Mr. Johnson): Withdraw the question and ask another one.

By Mr. Johnson:

Q. In the course of conversation, do you recall its being said by Defendant Johnson that neither Defendant Johnson nor Congressman Boykin was there to ask any favors or to interfere in any way with the pending criminal cases? A. I do not remember those exact words, either in that meeting or other meetings but I could tell you what was said along those lines if you care. To the best of my recollection.

(The Court) I think he is entitled to finish his answer.

(The Witness) I think what was said either at that meeting or subsequent meetings that you were not there to ask any favors or anything improper from the Department of Justice or from the Attorney General.

Now, I do not know what words were used but I think that point was made.

By Mr. Johnson:

Q. In reply, do you recall stating, or words similar, "Of course I know that?" A. Well, I might very well have. I do not remember the exact words but I am sure that I did not think at that time that there was anything improper in what you were doing.

Q. Now, following that there was a rather long conference dealing with this land development which continued for how long, would you say? A. Now, which conference?

Q. The first meeting that you had? A. I do not think that lasted very long, Congressman. But I might be mistaken on that. As I say, I thought that I had to come out of another meeting which was taking place in my office and meet with you in another office and so it is my recollection that it did not last very long.

But you might know better about that, Congressman.

Q. In the closing of the meeting do you recall making

a statement, or words inferring that you considered the economic advantages that would be gained by this development that they would outweigh any of the pending criminal cases? A. No, I certainly did not.

Q. You do not recall that? A. Not only do I not recall it, but it is completely out of character for me.

Q. Well, now, following then, if it is out of character, did you or did you not ask that a memorandum be prepared? A. I believe I did, yes.

Q. You could at that time have told the defendant Boykin and Defendant Johnson that there was nothing further to discuss and there was no need for continuing the discussion further. You could have, could you not? A. I could have done that.

Q. Did you do that? A. I did not.

Q. But on the other hand, you asked for a memorandum? A. I did.

Q. How did you ask that memorandum be sent? A. I do not recall. Probably to me. I do not know.

Q. Did you not ask that it me sent by special messenger personally to you? A. I might have very well done that, Congressman.

Q. As a matter of fact, didn't you receive it by personal messenger? A. I certainly do not remember that, Congressman. If you say I asked for a special messenger, and it had to be sent directly to me, I certainly would not quarrel with that.

Q. And, General, didn't you go further and set the date when we were to come back? A. I do not recollect that, Congressman, but I might very well have.

Q. Do you not recall stating that "I want to see you the following Thursday?" A. I do not remember that but I might very well have done that.

Q. Well, following— A. Could I say something about that?

Q. Yes. A. I think that just to get this all in the proper perspective when I said it was "out of character," I think that Congressmen or Senators are entitled to come in and represent their constituencies, represent their constituents and I think that, if they feel that the Department of Justice, or I have been unfair in any way that they are certainly entitled to bring that to our attention and you came in and felt that and expressed very strongly that we had been unfair to Mr. Edlin and that this indictment should not have been brought.

Now, it is possible that we bring indictments that are unfair and that we cause an injustice or if someone comes in—whether they write me a letter or if a Congressman or Senator comes in and says this indictment should not have been brought, that it is unfair that all the facts have not been developed, that those who are running the case have personal prejudice, I will look into it and I will make sure that the matter is examined.

Now, when you came in to see me about Mr. Edlin and said that Mr. Edlin should not have been indicted, that this was a question of prejudice, I felt that it was my responsibility to make sure that that had not been an unfair indictment, that there had not been an injustice committed against Mr. Edlin. I did not want to offset the fact that there was an indictment that should be brought versus the fact that there was an economic development. If the indictment should be brought, if justice demanded that it be carried through.

I am interested in any case whether Senator or Congressman or anyone says they have been unfairly indicted or prosecuted improperly, we would look into it. That is what I was anxious to do in this case.

You said we came in and talked about Mr. Edlin and I said I wanted to have a memorandum immediately, I wanted to make sure we had not been unjust.

Q. General, may I ask then after submitting that memorandum, why did you request defendant Johnson to go back to your department? A. What date of time are you talking about now?

(The Court) Is there evidence that he did? Is there evidence that he did request that he go back? He can refresh his recollection somewhat about that.

By Mr. Johnson:

Q. General, I ask you that following the meeting when you requested the memorandum, do you not recall a request of the defendant Johnson to return back to your department? A. I do not, Congressman, but as I say, it might have very well happened. I just do not remember.

Q. And you do not recall then that Defendant Johnson was requested to go back the following Thursday? A. Did you come back the following Thursday?

Q. I am asking you whether or not you recall. A. I tell you this, Congressman. This is just about two years ago. I do not remember it. If you tell me what you are talking about, maybe I can get it cleared up.

(The Court) Are you suggesting or asking the witness whether he requested the Congressman to come back to see him, or requested the Congressman to go see Mr. Miller who was in charge of the Criminal Division? The question has been "contact with the Department," and it was not clear to me and I do not know whether it is clear to the witness.

(Mr. Johnson) I will rephrase it.

By Mr. Johnson:

Q. Is it not true that you as Attorney General after the meeting on March 25, 1961, personally requested the defendant Johnson to come back to you to see you personally the following Thursday? A. I do not recollect that.

Q. Do you recall receiving a communication from Defendant Johnson on March 28, 1961? A. No, I do not.

(The Court) Now, what is that in relation to the document? There has been offered in evidence the principal presentation that was made. A letter from, I think it was, Mr. Johnson—a two page summary and then a very elaborate statement. What was the date of that?

(Mr. Johnson) Your Honor, we had not gotten to that yet. I am leading up to that now.

(The Court) As I understood, the witness said he asked you to send a statement. Now, this is something before the statement was sent.

(Mr. Johnson) This is before the statement was sent there and I asked him whether he did not request defendant Johnson to come to his department. I ask you if you would look at government exhibit 86-A and see if that refreshes your recollection?

(The Witness) I do not see that this adds anything, Congressman.

By Mr. Johnson:

Q. Did you not receive a letter from Defendant Johnson saying that he could not be at your office on the following Thursday and would make it another time. A. Yes.

Q. Yes. A. I still do not understand how that gets to the point that you have been making.

Q. General— A. Perhaps you could read the paragraph and then there would not be any mystery about it.

Q. With the Court's permission, may I read the first paragraph?

(The Court) Is it in evidence?

(Mr. Johnson) Yes.

(The Court) Certainly you may read it.

By Mr. Johnson:

Q. Letter to the Honorable Robert F. Kennedy, Attorney General, Washington 25, D.C.

"Dear Mr. Attorney General:

"Pursuant to your suggestion on Saturday past, I am happy to deliver by messenger the enclosed memorandum.

"As I will be in the District for the Easter Recess, I would appreciate the opportunity of calling you on my return Monday week rather than on Thursday next."

So, I ask you whether that refreshes your recolleciton that I was, at your request, to meet you on the following Thursday? A. No, it does not. I say it could possibly have happened. I think that letter shows that we evidently had an appointment on Thursday which you suggested be put off until the following Monday. How we happened to arrive at the appointment on Thursday, I do not know.

Q. Would you deny to the jury, General, that you made that appointment? A. I think I made it quite clear, Congressman. I just cannot remember. If you say it happened, I am sure that it did. I just do not remember how we happened to make the appointment on that Thursday.

(The Court) "That Thursday" would have been several days after the report was delivered, is that it?

By Mr. Johnson:

Q. Now, General, when was the next visit according to your calendar that the defendant Johnson visited your office? A. Well, on April 10, 1961 the record shows that Congressman Tom Johnson's office called "he would like an appointment to see you today or tomorrow, preferably in the morning."

So that is Mr. Kiernan's extension 5464 and then an appointment was made April 12, 1961. That first meeting, according to our records, Congressman, was a meeting on March 25, 1961 and the next meeting was after a request from your office to meet with me. We met then on April 12, 1961.

Q. So that the second meeting was on April 12, 1961? A. 1961.

Q. You recall that meeting, you were present, were you not at that meeting? A. Yes, I was.

Q. Well, can you tell the jury whether or not you discussed further a review of this pending matter? A. I believe I did and I think I have testified on it that Mr. Miller was present at that time and we discussed this matter with you.

Q. And at that time did you tell the defendant Johnson that the matter was closed, that there was no need for further conferences? A. Not to my recollection.

Q. But, on the other hand, General, didn't you tell Defendant Johnson that you had turned the case over to Mr. Herbert Miller, head of the Criminal Division and that defendant Johnson and Defendant Boykin were to get in touch with him? A. I believe that is correct and I believe that is what I testified to.

Q. So you encouraged the meeting then or asked the meeting be held with Mr. Miller? A. I do not think I was encouraging anything, Congressman. You were interested in the indictment of Mr. Edlin and the dismissal of it and I said, I think, quite properly that these matters should be handled in the proper area which is the criminal division and not with the Attorney General of the United States.

Again I go back to the fact that I think, if we had brought the indictment unfairly, we should have those facts brought to our attention. You felt that we had brought the indictment unfairly and that the matter was being prosecuted because of prejudice and so, therefore, I wanted to make sure that that was not true and, because I think, as your attorney has said, we want to bring justice to all the people.

Q. General, before proceeding on with the April 12 meeting in 1961, I want you to tell the jury whether at that meeting on April 12, 1961, or at any meeting with you, there was ever a request by Defendant Johnson or defendant Boykin to dismiss or interfere in any way with your department? A. Well, now, can I tell you what did occur?

I do not think anyone said he wanted this indictment dismissed.

Q. Of course not. A. I reached the clear conclusion that what you wanted to accomplish was the dismissal of the indictment.

(Mr. Doub) Just a minute.

I object to that, Your Honor, because he is stating an impression. I think he can—

(The Court) He can state the effect of the request.

(Mr. Doub) Anything said to him, Your Honor.

(The Court) He can state the substance of the request.

(The Witness) The substance of what, all of the meetings?

(Mr. Genn) I do not believe he can state his mental impressions or intentions.

(The Court) He is not to express his mental impressions. He may state the substance of what was done because it is admissible against your client as an alleged act in furtherance of the alleged conspiracy.

Go ahead.

(The Witness) These meetings that occurred were for the purpose of dismissing the indictment against Mr. Edlin.

By Mr. Johnson:

Q. Now, General, let us call your attention again, may I, to exhibit 85-A, and ask you if, in view of this letter, that is a correct statement to this jury?

(Mr. Tydings) I think maybe we had better have 86-B and C read to the jury at the same time since they were attached to the letter.

(The Court) He is talking about the impression or the substance of a series of conferences. Now, you hand him one letter which is taken off of the papers with which it was associated.

(Mr. Johnson) We have only had two meetings. We have only had the meeting on March 25, 1961 and the meeting on April 12, 1961.

(The Witness) Let me say, Congressman, when I gave that answer, I am summarizing the various contacts that were made with me.

(The Court) I understood the question dealt with the whole series.

(The Witness) The whole series of contacts. I cannot tell you any specific language about it.

(Mr. Johnson) Well, General, the two meetings that we refer to were the only meetings that defendant Johnson and Defendant Boykin discussed this matter personally with you, is that not right? Do you understand the question? A. No, I do not.

Q. I say the two meetings that we referred to on March 25, 1961 and on April 12, 1961, in which the defendant Johnson and Boykin were both in attendance, that was the only meeting defendant Johnson and Defendant Boykin had personally with you?

(The Court) Are you talking about only, with the two of you together or about one of you separately? I think we ought to understand the question.

(Mr. Johnson) I said first together.

(The Witness) I think there was a meeting on August 31, 1961, September 7, 1961 and October 17, 1961.

By Mr. Johnson:

Q. Meeting personally with you? A. Yes.

Q. Defendant Johnson? A. Well, now—

Q. And defendant Boykin? A. The record shows on August 31, 1961 a meeting from Congressman Boykin. I do not know whether you were present or not. The meeting on September 7, 1961 was Congressman Johnson and I do not know whether Congressman—

Q. General, I ask you a simple question whether the two defendant Johnson or Boykin had any other meetings with you together other than the two that we refer to in March and April of 1961? A. That is the first time you have asked that question.

Q. I thought I asked that before? A. I understand that those are the two meetings that we have down here, Congressman. I am not sure whether you accompanied one another in either of the meetings of August 31 or September 7 or October 17. I am not certain about that.

Q. Now, you have made the statement of some assumption about the dismissal of an indictment of Mr. Edlin. I will ask you to refer to government Exhibit 86-A which is a letter that I referred to on March 28. And ask you if it is not in simple plain terms that the matter was for review only? A. Yes.

Q. Then why do you tell the jury that it was to dismiss when there is a letter setting forth fully what the intent was? A. Well, Congressman, can you tell me why you were so anxious to come in there and have us review it if you did not want us to dismiss it?

Q. General, I am going to answer that question.

(The Court) I think we must stick to questions and answers of fact. I think that the answer should stop there.

(Mr. Johnson) I am sorry, Your Honor.

(The Court) You should not argue.

(Mr. Tydings) Your Honor, we would like to give the jury 8y-A, B and C and refresh their recollection with it again to see just what the Congressman was talking about.

(The Court) I think, Mr. Johnson, you can confine your questions to facts that you want and your counsel can argue it later. And other evidence can be put in. This is not the time to argue the case.

(The Witness) Congressman, I said—to the best of my recollection no request was ever made to dismiss it.

(Mr. Williams) Your Honor—

(Mr. Johnson) Let him finish. I would like to get that.

(Mr. Williams) Let us clear the record on something. Are all three of those in evidence, A, B and C, or have two of them simply been marked for identification? Would you look, Mrs. Zielinski?

(The Clerk) They are all in evidence. Only certain pages of 86-C have been admitted.

(The Court) Mr. Tydings, if they have not been fully admitted in evidence—

(Mr. Tydings) We would like then to offer—

(The Court) I believe they were identified.

(Mr. Williams) I have no objection to their going in, Your Honor.

(The Court) They were to be offered when someone from the Department of Justice was on the stand to say when they had been received.

(Mr. Tydings) 86-A has been offered. 86-B has been offered. 86-C has been offered in so far as certain pages are concerned and marked. The Government will now ask that 86-C be offered in its entirety. If it has not already been so offered.

They were all connected with the covering letter which Mr. Johnson sent to the Department of Justice. You recall the testimony of Mr. Johnson's secretary about the dictation of them.

(The Court) If there is no objection from the defendants.

(Mr. Genn) The only objection that has been raised previously was the prejudical character on which the Court has already indicated its ruling.

(The Court) That is right. You have your exception on the point that you have made before. Now, 86-B is in evidence if it was not already so.

(Mr. Johnson) Your Honor, with permission, since the letter on the 28th has been introduced into evidence and partly read, I think in fairness to the jury, I would like permission to read that short letter to the jury at this time.

(The Court) Has it not already been read?

(Mr. Williams) It has been read, yes, A, and B have been read.

(The Court) I think it has been read. A and B have been read. I do not see any point in taking the time to do it now, though, certainly at an appropriate time 86-A, 86 and 86-B all parts of them may be read to the jury as you wish.

I think it is understood that the thick document was not read to the jury at the time it was first offered but counsel would attempt to decide which parts of it each one wanted read in order to avoid taking the time to read a great deal of what might be immaterial and that can still be done at some time during the government's case or at some time during the defendant's case as you wish.

By Mr. Johnson:

Q. Now, General, to get back to the April 12 meeting of 1961, did I understand that you did advise defendant Johnson and defendant Boykin that you had turned the matter over to Mr. Miller—the head of the criminal division? A. I believe I did.

Q. And for what purpose did you turn it over to him? A. So that he could review the matter and see if an injustice had been committed.

Q. So as of that time it was to be reviewed? A. Yes.

Q. You had no request to dismiss up to that time, had you, by Defendant Johnson or Defendant Boykin? A. I think I made that clear. I do not think I ever had a request to dismiss the matter.

Q. And did you turn it over to Mr. Miller? A. Yes.

Q. Do you recall telling the defendant Johnson and the

defendant Boykin to contact Mr. Miller? A. I am sure I did.

Q. So then you were inviting, were you not, the appointment with Mr. Miller by defendant Johnson and defendant Boykin in this matter? A. Congressman Boykin and Congressman Johnson were interested in this matter and they wanted to have certain answers and achieve certain results so I recommended that they contact Mr. Miller for further review of this situation.

Q. General, to clarify it, did you not personally, as Attorney General, suggest to defendant Johnson and Defendant Boykin that they were to contact Mr. Miller?

(The Court) I think he has specifically answered that.

(The Witness) Instead of me, Congressman Johnson, Mr. Miller was the correct place for this matter to be reviewed. This was a criminal matter. Mr. Miller was head of the Criminal Division. If they wanted to have anything further accomplished in this case, then they should contact Mr. Miller.

(Mr. Johnson) Your Honor, please, I would like for him to answer my question. Everytime I ask him the same question, he evades the answer.

(The Court) I think the answer is a sufficient one and I will not give the instruction you request but you may ask another question.

(Mr. Johnson) All right.

By Mr. Johnson:

Q. Now, what other meeting did you have with Defendant Johnson and defendant Boykin personally after the April 12th meeting? A. Well, the record shows that, Congressman, and I have to speak from the record, it shows that Congressman Boykin came by on August 31, 1961.

Q. And I think it is stated there that on September 5 defendant Johnson requested an appointment, is that right? A. Yes, sir.

"Congressman Tom Johnson's office called to confirm the appointment he made with you for this Thursday."

Q. And is it not true that there was an appointment with you by defendant Johnson on September 7, 1961? A. Yes.

Q. Now, Mr. Tydings asked you on direct examination, General, did Congressman Johnson or Congressman Boykin discuss with you any other matter other than what you have testified to, and your answer was, "No." Do you remember making that statement? A. No, I do not. I do not think I answered that way.

Q. Well, now, General— A. I think the question—shall I say what I think the question was and what the answer was? Do you want me to do that?

(The Court) Do you wish him to do that?

(Mr. Johnson) I will ask a question. Did Congressman Johnson or Boykin discuss with you at any time matters other than what you have testified to and I include in that possibly discussions on legislation?

(The Witness) Yes, and I think I made that clear in answering Mr. Tydings' question.

(The Court) You may answer it again.

(The Witness) I made that clear. I think Mr. Tydings asked me whether the purpose of the meeting was in connection with Mr. Edlin and I said that it was but it did not preclude the discussion of other matters.

By Mr. Johnson:

Q. And what other matters, General? A. I think such as perhaps you mention there might have been legislation or any other matters. I think Congressman Boykin was particularly interested originally about the rules fight and I know that we discussed that and I think that very possibly we might have discussed some legislation of the Department of Justice that was then before Congress.

Q. Now, General, do you have any notes on your meeting

with defendant Johnson on September 7, 1961? A. I do not.

Q. Do you recall what was discussed at that meeting? A. I can just give you the best recollection I have.

Q. What is that? A. Which is based on the examination of some of the records and conversations that I have since had. Would you like me to give you that?

Q. General, if I tell you at that—

(The Court) Wait a minute.

(Mr. Johnson) I do not ask for it, no. Because it is—I will develop it in another way.

(The Court) All right.

By Mr. Johnson:

Q. If I tell you that on the meeting of September 7, 1961, that the Edlin case was not discussed, would you say that is a true or false statement? A. Well, I would say that to the best of my recollection it was discussed.

Q. May I refresh your recollection? Do you recall that on September 7, 1961 Defendant Johnson coming to your office in respect to rumors that were being made in his district as to Mr. Tydings' making allegations about the visits to your department, that they were not true. You know they were not true and I asked you to intercede about it and you said "I will take it up with Mr. Miller." Do you remember that? A. I think you did, Congressman. In my judgment that was again about the Edlin matter. The rumors were, as I remember them now, Congressman, that you were attempting to fix the case of Mr. Edlin. That these rumors were around and that you came in to see me and said that these rumors should not be circulated, that you were attempting to fix the Edlin case.

Q. Now, General, did it say fix."

(The Court) Now—

(Mr. Johnson) I am asking a question on that. Were not

the rumors that—they had nothing to do with "fixed" but defendant Johnson and Boykin were making visits to the Attorney General's Office in respect to Mr. Edlin?

(The Witness) To get the indictment dismissed. That was the rumor, Congressman, that you expressed concern about as I recall.

By Mr. Johnson:

Q. Did you not say you would take it up with Mr. Miller? A. I am very certain that I did.

Q. Did you say there was any merit or truth to that statement at that time or rumors? A. I do not know what my exact answer was on it. I am sure I said I would take it up with Mr. Miller, and I did take it up with Mr. Miller.

Q. To your knowledge did not Defendant Johnson and Defendant Boykin take it up with Mr. Miller, too? A. I think they probably did. I know there was a good deal of discussion about it.

Q. That was in September of 1961, is that correct? A. Very likely.

Q. Did not Mr. Miller telephone Mr. Tydings to tell him that there was no truth to such a rumor. Do you have knowledge of that? A. I do not, no. I know we discussed it with Mr. Tydings.

Q. So then the meeting on September 7 does refresh your mind as to the reason defendant Johnson came to your office?

(Mr. Williams) Your Honor, may we have the answer read—not to this question but the answer to the prior question read back because I'm not certain whether the witness misspoke himself or not. My understanding, and I am not sure I heard him accurately, he said, he did take it up with Mr. Miller.

I do not know whether he meant Mr. Tydings or not. Would you read that back?

(The Witness) I can say what it meant. I did take it up with Mr. Miller and I am confident from what I heard, again, I was not there, but I am confident that Mr. Miller took this matter up and discussed it with Mr. Tydings.

(The Court) That is right but as to what Mr. Johnson included in his question as to what Mr. Miller said to Mr. Tydings is not evidence in this case. If Mr. Miller takes the stand, Mr. Miller can be asked, or other evidence can be put in.

(Mr. Johnson) Could we have a five minute break, Your Honor?

(The Court) Mr. Johnson has requested a five minute break.

We will certainly take some further time.

(A brief recess was taken.)

(The Court) Bring the jury in.

(The jury returned to the jury box.)

By Mr. Johnson:

Q. May it please the Court. General, I believe that at the time of our recess we were speaking of the September 7, 1961 meeting. A. May I have those pages back?

Q. I don't know—A. Did I leave them there.

Q. I say, I believe at the time of our recess we were speaking of the meeting on September 7, 1961, is that correct? A. Yes.

Q. So you have testified to three meetings as to Defendant Johnson, have you not, sir? A. I believe so, yes.

Q. Now, were there any other meetings that you recall, or referring to your notes, that Defendant Johnson talked with you? A. Well, now, these are the only ones that are indicated in my notes, and I would have no other way of knowing that.

Q. Now, would you have knowledge as to any visits De-

fendant Johnson or Boykin made to Mr. Miller, who is head of the Criminal Division? A. Let me say I know that the meetings were taking place, but I don't have any independent recollection, nor can I give you any specific case.

Q. Did Mr. Miller keep you advised, sir, as to those meetings? A. To some extent he did.

Q. Did you make notes or memorandum of the meetings? A. You mean what he told me about the meeting?

Q. Yes. A. I did not.

Q. You have testified on direct examination that knowledge came to you in respect to a case known as the Dranow case, which allegedly involved Mr. Hoffa? A. That is correct.

Q. Would you tell the jury as to when you first had that information? A. When I first had the information about what?

Q. As to the Dranow case, which allegedly connected Mr. Hoffa. A. Well—

(The Court) What do you mean Dranow and Hoffa or with Edlin involved in it.

By Mr. Johnson:

Q. With respect then to first the Dranow case? A. And Hoffa.

Q. And Hoffa? A. 1957.

Q. In 1957. I believe you stated that Defendant Boykin communicated with you in respect to the Dranow case, is that correct? A. If I may say so, we are going to get into a real can of worms because Dranow is involved in a number of matters, Congressman, which had nothing to do—

Q. May I then withdraw the question?

Did Congressman Boykin communicate with you in respect to an alleged stolen $100,000 government note? A. Yes, that is correct.

Q. When did you first receive any information from defendant Boykin in respect to that alleged $100,000 stolen note? A. I do not know exactly but it was in early 1961, I believe, and my best recollection it was at some kind of a social function but I do not know exactly where it was.

Congressman Boykin and Mrs. Boykin were at my home for dinner on one occasion. It might have been then but it might have been some other time. I believe it was before the meeting of March 25, 1961. I believe it was early 1961 but I cannot give you the exact time.

Q. Or, did you receive any written memorandum or note from Congressman Boykin in respect to the $100,000 alleged stolen note? A. I believe that—I think he wrote me several letters and I think that in one or two of those letters he mentioned the fact and I think particularly after the meeting of October 17, he mentioned, of 1961, he mentioned the fact that Mr. Edlin could be extremely helpful to the Government in connection with the $100,000 stolen bond and had a good deal of information and should testify.

Q. And in response to that what, if anything, did you do as Attorney General? A. I think, as I have stated, I referred it to Mr. Miller, head of the criminal division, and I also talked to Mr. Walter Sheridan who was working on the matter.

Q. Do you have any knowledge of what Mr. Sheridan did? A. I believe he interviewed Congressman Boykin to obtain whatever information the Congressman had on this matter.

Q. So then in response to the information received from Congressman Boykin, you did make an investigation through your department? A. That is correct.

Q. And you also stated that you talked with Mr. Miller, in respect to this note? A. I believe I did, yes.

Q. Now, at that time did you do anything further in respect to this investigation of the $100,000 note? A. I do not believe I did, no.

Q. To your knowledge, do you know whether Mr. Miller did anything further? A. I am sure he talked to those who were involved in the investigation and he might have asked the FBI to look into it. I think, as has been pointed out here, Mr. Edlin ultimately appeared before a grand jury in Florida in connection with this and, in fact, he might have appeared twice. He was interviewed a number of times and it was felt that those interviews were not satisfactory and this, I believe, was communicated to Congressman Boykin and he then said that Mr. Edlin wanted to cooperate and wanted to give all the information and so then he appeared before a grand jury and it was reported to me that those who were handling the grand jury did not feel that he had been completely truthful and had given all the information.

(Mr. Genn) If the Court please, can we approach the bench?

I am going to move to strike that if the Court please. That is highly prejudicial to this defendant; it is the drawing of a conclusion from what other people have stated. It is hearsay. I move for a mistrial with respect to this defendant. This testimony has consistently made references to matters which have no reference to this particular case.

It may or may not have been brought out appropriately so far as the other defendants are concerned, but in so far as this defendant Edlin is concerned, they have brought in everything from all over the place except what is involved in this particular proceeding and again I renew my motion for a mistrial.

(The Court) Denied. I have instructed the jury and I will instruct them now that this testimony of the witness just stated about what Mr. Miller told him or as to what someone told him as to what people in charge of the grand jury investigation thought of Mr. Edlin's testimony is not to be considered by you as evidence against Mr. Edlin in this case.

I strike that out as evidence against Mr. Edlin. I deny the motion for a mistrial and I renew my instructions to the jury that they are only trying the particular case here and they are not trying any other and they are not to consider what Mr. Edlin may have done or may not have done in connection with matters that have nothing to do with this indictment.

The concluding portions of your remarks, Mr. Genn, will come more appropriately in your motion at the end of the case.

(Mr. Johnson) Do we have a question, Your Honor? I do not know.

(The Court) I am not sure whether he finished his answer. I think it was the end of the answer that produced the motion from Mr. Genn.

By Mr. Johnson:

Q. General, may I ask you again, you did confer with Mr. Miller from time to time in respect to this one hundred thousand dollar alleged note? A. Yes.

Q. You testified you have knowledge that Mr. Edlin was to be interviewed in respect to this note? A. Yes.

Q. Now, do you have knowledge as to the number of conferences Mr. Miller, your subordinate, had with defendant Johnson and Defendant Boykin in regard to this $100,000 note?

(The Court) Hasn't he answered that he does not know how many conferences there were?

(Mr. Johnson) I do not think he has answered it on the conferences.

(The Witness) You mean conferences on the $100,000 note.

By Mr. Johnson:

Q. Yes, Mr. Kennedy, with Mr. Miller. A. I have no idea.

Q. You do not? Do you have knowledge that there were conferences with Mr. Miller, your subordinate by defendant Johnson and Boykin in respect to this $100,000 note? A. No, I do not.

Q. You have no knowledge of that? A. No. Can I try to clarify it? I assume that this $100,000 note was brought up in the course of the conversation just as it was with me but I was not aware that either Congressman Johnson or Congressman Boykin had any personal knowledge of the stolen $100,000 note.

Q. But you testified that you met Congressman Boykin at a social function. He mentioned it to you there. You also stated that you had a letter.

(The Court) I think you are talking at cross purposes. The Attorney General said he did not know that the Congressman, Mr. Boykin had any personal knowledge about the note, and he is not saying that Mr. Boykin did not mention it to him about Mr. Edlin's possibly having some knowledge.

(Mr. Johnson) But, Your Honor, I want to clarify because I understood him to say that Congressman Boykin did have knowledge and conveyed what knowledge he had to you? A. Yes, but he was not involved, himself in the stealing of the $100,000 note. I never said that. He had some information from someone else that they had knowledge about a stolen $100,000 note. He suggested we get in touch with him. I never claimed that Congressman Boykin was involved in the theft of the $100,000 note.

By Mr. Johnson:

Q. But you do maintain that Congressman Boykin brought it to your attention? A. Yes.

Q. You know that Mr. Miller had knowledge of this $100,000 note? A. Yes, we all had knowledge of it.

Q. Now, do you know to your knowledge of any difficulty in respect to having defendant Edlin appear in Florida

before the Grand Jury? A. As I understand it, there was some difficulty. I cannot give you the details of it.

Q. Would it be a correct statement to say that your office naturally requested defendants Johnson and Boykin to make the contact and to try to persuade Mr. Edlin to go to Florida to testify in the Hoffa investigation? A. I do not know that.

Q. You do not? A. No. I know, as I said already, I do not know whether you wanted me to repeat it, I have said already that Congressman Boykin—I was not aware of your knowledge or interest—indicated right from the beginning that Mr. Edlin had some information about a $100,000 note. He was very anxious for him to testify. I know that there was some difficulty and I know that we had some conversations about it and I related the fact that there was some difficulty and now I am going to get into problems. I will not tell you what the difficulty was.

(The Court) I will tell you to stop answering because of Mr. Genn's suggestion that it might have more prejudice to him than it coud have merit to you.

(Mr. Johnson) Your Honor, may I explain I think the reason for pressing it, there were visits to Mr. Miller.

(The Court) Mr. Miller will be here.

(Mr. Johnson) If he will be here, all right.

(The Court) The government has said Mr. Miller will be here so I see no point in trying to get it out by second hand.

By Mr. Johnson:

Q. General, one last final question. Do you have a report or was a report made to you by any of your subordinates that on January 3, 1963, that a —

(Mr. Tydings) If Your Honor please, I think we had better approach the bench and find out what the proffer of the cross examiner is since it is out of the indictment period. I would like to approach the bench. What the proffer is. What the question is.

(At the Bench.)

(Mr. Johnson) Here is what I want to ask this witness, whether or not he had knowledge or was it pursuant to his instructions that his subordinate came to defendant Johnson's office on January 3, 1962, in which he reported on?

(The Court) What date?

(Mr. Johnson) It was on January 3, 1962.

(The Court) It is not 1962 — I mean it is not 1963?

(Mr. Johnson) No, 1962. Came to his office and reported on what the investigation was being made to assure Congressman Johnson that there was nothing to the investigation and not to worry about it.

(Mr. Tydings) I do not think that is proper. It is outside the indictment period.

(The Court) That who was—

(Mr. Johnson) Miller.

I want to know whether he has knowledge. He is his subordinate. Whether he had a report on it or whether he sent him.

(The Court) I think that you—

(Mr. Genn) I think, speaking for defendant Edlin, that is beyond the scope of the direct examination.

(The Court) Well, it certainly is beyond the scope.

(Mr. Tydings) It is outside of the indictment period.

(The Court) I think that the Government, this is not a suit of Mr. Kennedy against Mr. Johnson. This is a prosecution instituted by the grand jury in which the government is represented here by the U. S. Attorney. I think it is a proper question for you to ask Mr. Miller but if Mr. Miller takes certain action and says certain things, it is something that you can ask him but the Attorney General has not stated that he thinks you are guilty of this offense

and you are asking him did he send somebody to say you were not guilty.

Now, if you ask that question, it opens things fairly wide on redirect and I think that you had better discuss with your counsel before you ask that question.

(Mr. Doub) Withdraw the question.

(Mr. Johnson) I will merely say I understand Mr. Miller will be over here.

(The Court) All right.

(In open court.)

(Mr. Johnson) No further questions at this time. Thank you.

(The Court) You are withdrawing that question?

(Mr. Johnson) Yes, I will withdraw that last question.

(The Court) Mr. Williams?

(Mr. Williams) Your Honor, I have just a few questions.

CROSS EXAMINATION

By Mr. Williams:

Q. Do you have government exhibit 90 there, Mr. Attorney General?

(The Court) No, that—

(The Clerk) That is 108.

(Mr. Williams) Is it 108?

By Mr. Williams:

Q. I direct your attention to, first of all, the calls which are reflected on the second page of government exhibit 108 at the very bottom, Mr. Attorney General, calls dated Monday October 16, 1961 and Wednesday, October 18, 1961, and ask you if it is not a fact that those calls from Congressman Boykin related to the Hoffa matter about

which you told us during your direct examination? A. Yes, they related to the fact that Mr. Edlin had information implicating some other people in connection with the $100,000 bond, the stolen $100,000 bond.

Q. I believe that under examination earlier today you said that Mr. Boykin had communicated this information regarding Mr. Edlin's purported information about Mr. Hoffa and the bond prior to March 25? A. I believe he did. At least it was early in 1961 to my recollection.

Q. And that was at some function other than an official meeting at the Department of Justice? A. I am almost certain of that.

Q. And it was at that time that you instructed Mr. Walter Sheridan to follow through on this on this information and gather together such facts as he could regarding the relationship of Mr. Hoffa to the so-called Dranow treasury note or the $100,000 stolen bond, is not that correct? A. Yes.

Q. I am trying to put this in its proper chronological frame of reference, Mr. Attorney General. This was before March 25, 1961. A. Yes.

Q. Thereafter, and I again direct your attention to Government exhibit 108, and this time to an entry which my copy has inked in September 8, 1961, do you have that sir? A. I do.

Q. That reflects a call from the Attorney General of the United States to Mr. Boykin, does it not? A. Yes.

Q. That call, likewise was a call regarding the Hoffa episode, was it not? A. Well, again, when we call it the "Hoffa episode"—

Q. We will call it—

(Mr. Tydings) Let the witness answer.

By Mr. Williams:

Q. I will rephrase the question.

(The Court) Let him answer you. You asked a question.

(The Witness) Well, tied in with all of this was Mr. Edlin and the dismissal of the indictment or doing something in connection with Mr. Edlin.

I was told that Mr. Edlin had information that would be helpful in connection with another investigation which involved Mr. Hoffa and Mr. Dranow, so Congressman Boykin contacted me a number of times to try to make sure that we understood and realized that Mr. Edlin was being fully cooperative with the Federal Government and that he was going to give information that would be very helpful to us.

Now, I can not tell you what that call of September 8, 1961, I cannot tell you specifically what that was.

Congressman Johnson came to see me on September 7 at 12 o'clock noon and I do not know whether I was calling him the next day about—well, in any case it was in connection with Edlin and perhaps with the Hoffa note, or the $100,000 note, or maybe something else.

Q. I believe you testified under cross examination by Mr. Johnson, and if I misstate your testimony, correct me, that Mr. Boykin was much more active in relationship to Edlin's relationship to the grand jury proceeding involving the treasury note in Florida than Mr. Johnson. A. I do not remember. The only one I can remember that was interested in the matter was Congressman Boykin. I do not happen to remember Congressman Johnson mentioning that.

Congressman Boykin brought it up before. It is my recollection before he ever came to see me, and he brought it up a number of times at the end to make sure that we had obtained all the information that Mr. Edlin had and for that I was appreciative.

Q. One other thing on that subject, Mr. Attorney General, if you will look again at Government exhibit 108 which purports to be a record of visits and phone calls and

appointments, and I ask you to direct your attention to the bottom of the first page and an entry "Tuesday, August 29, 1961," an entry which reports that "Mr. Boykin called you two times on that day."

Do you see that, sir? A. Yes, I do.

Q. Then you look up above to the list of appointments and it appears that he came in to see you two days later on August 31, 1961. A. Yes, sir.

Q. Is it your recollection that that was in connection with Mr. Edlin's appearance before the grand jury in Florida involving the socalled "Hoffa-Dranow treasury note? A. It could be. If Congressman Boykin feels that it was, has a strong recollection, I would have to study that. It could very well be, Mr. Williams, reconstructing the events. It was about that time, which I have done from the records. It was about that time that Mr. Miller told Congressman Johnson that he was almost definite we were going to go ahead with the Edlin matter. That was the end of August, 1961 and so reconstructing it, myself, I thought it was in connection with the fact that a decision had been made by Mr. Miller to go ahead with this case and that Congressman Boykin came to see me and spoke very highly of Mr. Miller but thought that this case an error. Now, that is my best recollection on it. It is very possible that he might also have mentioned that Mr. Edlin had information in connection with this $100,000 bond. But my best recollection was it was in connection with a decision that had been made by Mr. Miller to go ahead with this case.

Q. Now, turning your attention to another subject, you testified as I understood your testimony this morning, very candidly that you did not have a recollection of Mr. Boykin stating to you that he had an interest in the tract of land in Waldorf City? A. That is correct.

Q. Which was one of the subjects discussed in the March 25, 1961 meeting? A. That is correct.

Q. And in response to a question by Mr. Johnson as I

understood your testimony again, you said that you do remember that the name of the land was Boykin City? A. That is correct.

Q. And you do not remember whether you were told that or whether that appeared on the charts and maps? A. I think that Congressman Boykin discussed it or it came out in discussion. I do not think I read it from the maps. It might have come out that first day in the discussions but I was clear in my mind that the name of at least part of this development was going to be "Boykin City."

Q. Now, Mr. Attorney General, I would like to hand you government exhibit 111 which has been received in evidence, Mrs. Zielinski, and government exhibit 122 which has been marked for identification here. I will give you a chance to look at these. One being a letter from Mr. Boykin to you. The other being another letter from Mr. Boykin to you which you identified here this morning on this date and direct your attention first of all to the first paragraph of government exhibit 111. Your response to it, and then if you would read the second paragraph, Mr. Attorney General, of page 4 of what has been marked for identification, I will then ask you a question. A. O.K. I might have to look at it again after your question.

Q. This is my question: Do they refresh your recollection that Mr. Boykin did disclose to you that he had an interest in the property in Waldorf? A. No, they do not refresh my recollection on that. These letters do not. The fact to the contrary, to be quite frank about it.

Do you want me to explain why?

(Mr. Tydings) Please.

By Mr. Williams:

Q. Will you explain.

(The Court) I think he should complete his answer.

(The Witness) I think we agree that the letter is slightly confusing. It says "we have a little place down on the

Patuxent River" which would indicate that he did have some ownership. "It is one of the beauty spots of the earth and in driving down yesterday one of my friends suggested that I look it up. Because it was a colored project that was being developed at Chesapeake Heights down on Chesapeake Bay.

"We drove down there and I am enclosing a brochure which was given me by Albert I. Cassell, a colored architect. This brochure gives all of the information," from that, the first sentence "we have a little place down on the Patuxent River," it would indicate he had the ownership and "driving down yesterday, one of my friends suggested I look it up," which would indicate he had not seen it before. Is there anything further in here?

Q. No, there is not.

I direct your attention to the paragraph on the middle of exhibit 111 which the government has not offered yet.

(The Court) I thought 111 was in.

(The Witness) It is 122. Can I read the paragraph?

By Mr. Williams:

Q. It is agreeable to me if he reads it.

(Mr. Tydings) I think the government would like to reserve the right to read government exhibit 122 in its entirety to the members of the jury.

(Mr. Williams) I have no objection to its being read in its entirety, Your Honor.

(Mr. Tydings) Then we have no objection.

(The Witness) May I read the paragraph?

(The Court) There is no use reading the whole thing.

(The Witness) "So you can see the facts. These people that Edlin was agent for, sold this property for over $10,000,000 more than they paid for it. Think of the great profit the people in these building and loan companies made

out of this alone. I know what I am talking about because Colonel Albert Ernest, one of my associates, sold this property to Charles Land Company and the Leisure Land Company for about $10 million and these two companies have now sold it to the Congressmen who were very outstanding in their profession of building and developments for $20,200,000. See what these wonderful stockholders in the building and loan companies have made and will make from the profit. These are the ones that they are objecting to. I do not know of anything or anybody that could make money any faster than that in such a short time." I do not know.

. It does not indicate that that he had personal interest there. He said one of his associates, Colonel Albert Ernest.

By Mr. Williams:

Q. You did not know their relationship? A. I didn't know what their relationship was. Can I answer further to make sure that, in fairness to Congressman Boykin. It was called "Boykin City" and I can not testify absolutely that he did not tell me that he had an interest or that he went into some of these matters. I just—again I just cannot say that. I can say that as I have said about Congressman Johnson, but I can not say unequivocally that although these letters, as I say, indicate to the contrary, I think—I mean, I would not be able to say that he did not mention that to me.

Q. You would not deny that he did disclose it? A. I do not have a recollection of it but I would not deny it in fairness to Congressman Boykin.

(Mr. Williams) That is all.

(The Court) Mr. Genn?

(Mr. Genn) No questions, Your Honor.

(The Court) Mr. Robinson?

(Mr. Robinson) No questions.

(The Court) Any redirect?

(Mr. Tydings) There is one possibility of confusion to the jury.

REDIRECT EXAMINATION

By Mr. Tydings:

Q. Attorney General Kennedy, if you refer to government exhibit 108 which I think you have in your hand and on the appointment list there for April 12, I believe it lists only Congressman Johnson. Now, what is your best recollection as to who was present at that meeting? A. I believe Congressman Johnson and Congressman Boykin. I think—

(Mr. Williams) I do have one more question, Your Honor, if I may. I neglected to ask the Attorney General if he had seen an exhibit which is marked Government exhibit 90 for identification. It has not been offered by the Government yet as I understand the record.

(Mr. Tydings) That is right.

By Mr. Williams:

Q. Had you seen that before, sir? A. I do not recollect having seen it before.

Q. Do you recognize the handwriting at the top "Herbert J. Miller;" you do not, or do you? A. I think it is Congressman Boykin. I do not think I saw it but I recognize that handwriting.

Q. Thank you, sir.

(The Court) Any further questions?

(Mr. Johnson) Just a minute.

(Mr. Tydings) If there are no further questions, I suggest that we allow the Attorney General to return.

(The Court) I gather that Mr. Johnson might have something on his mind. Mr. Doub, are you considering

further questions or not? I do not want to excuse the Attorney General—certainly I do not want to bring him back.

(Mr. Doub) Just a moment, Your Honor.

(Mr. Williams) Yes, Mr. Johnson has just called my attention to a letter which I would like to have identified at this time, Your Honor, while the Attorney General is here and we will offer it at the appropriate time. It is a thermofax copy but I think he can perhaps identify it. Mark it Boykin exhibit 9 for identification.

(The Court) Are you acquainted with it, Mr. Tydings?

(Mr. Tydings) I think I know the letter but I am not certain.

(The Clerk) Boykin exhibit 9 marked for identification.

(Defendant Boykin exhibit 9 marked for identification.)

(Mr. Williams) I am going to show you a letter Mr. Attorney General, marked defendant Boykin exhibit for identification No. 9 and ask you if that is a letter exclusive of the markings at the top of the page or a copy of the letter which you sent to Mr. Boykin?

(The Witness) Yes.

(Mr. Williams) Thank you.

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GOVERNMENT EXHIBIT NO. 86B

MEMORANDUM:

Over a period of months, negotiations have been underway dealing with the financing of a residential and commercial development, known as Boykin City, located in Southern Maryland, some 20 miles from Washington, D.C., by and through First Colony Savings and Loan Association, Inc., a Maryland corporation, organized in 1958, with its principal place of business in Prince Frederick, Maryland (Southern Maryland). The initial loan will be in excess of two million dollars and will provide housing, a country club, golf course, modern shipping center, streets, sewer and water system, and other improvements. In addition, the 8,000 acre tract will also include a commercial development, and interest has already been shown by certain corporations to locate their plants in that labor surplus area. At the present time, however, First Colony, together with certain individuals, are under indictment in the U. S. District Court of Maryland, and the constant danger of publicity in respect to the indictment and the certainty of news releases during any trial of this subject matter is of grave concern to all parties involved, especially as it affects the availability of funds for the Boykin City development.

Accordingly, a careful study has been made of the indictment, the complete file reviewed, and discussions held with various representatives of the Association. It would appear that the indictment, in question, may have been greatly motivated by the activities of one James W. Bridges who, apparently seeking vengence, conferred with U. S. Savings and Loan League officials, representing Colony's major competitors, and presumably with their advice and assistance contacted the Postal Department. As to the degree of pressure and influence brought by the League, it is difficult to ascertain, but in the normal course of events, if any of the advertisements of First Colony were in fact questionable, then a conference could have been held

between representatives of the Association and the Postal Department.

It is interesting to note that many of the activities, common to the industry, that might possibly be questionable do not appear with respect to this particular Association. In the examination, no loans, directly or indirectly, appeared to have been made to officers or directors of the Association, nor does there appear that any business is being done with insurance agencies or title companies owned or represented by officers or directors of the Association or members of their families. Annual audits have likewise been made by independent certified accountants, and from the statements resulting, the Association appears to be in splendid financial condition, capable of fulfilling its commitment to the Boykin City project.

In the general discussion of the Boykin City loan, request was made for a detailed memorandum of each and every paragraph of the indictment. With the consent of the Association, an additional copy has been secured, the same is herewith enclosed so that a better understanding may be had of the pending matter.

Dated: March 28, 1961

GOVERNMENT EXHIBIT NO. 86

Synopsis Colony Indictment

The indictment of First Colony and the individuals is based primarily upon a question of intent and sematics, or a question of definition, or the supposition as to what the general public might believe upon the reading of certain words or phrases. In great part the indictment is based upon a question of the meaning of the words "current rate" as applied to dividends—does it refer to a past dividend, a future dividend, an earned or anticipated dividend, and which of these definitions is applied by the public.

The question of whether or not "insurable" would generally be confused by the public to mean "insured" and, of course, was that the intent of the defendants. A construction of underwriting policies revolving around the word "conservative"—what constitutes a conservative loan; who may define a conservative loan; is a loan of 75% of the value of property a conservative loan; must it be a particular type of property; can a development loan for streets, sidewalks, water lines, be a conservative loan.

Is a reference to "mortgages on new homes" a misrepresentation when factually a commitment has been made for the construction of new homes, subject to mortgages running to the advertiser, if construction of the homes has not commenced although development of the ground improvements has begun?

Is an advertised policy of first mortgage loans violated by the existence of two second mortgages, representing less than 2% of the assets of the advertiser and given for public relations purposes or as repayment for favors done the association, a sufficient breach of a first mortgage loan advertised policy to constitute fraud? Is advertising not deemed sufficient by reprehensible for a cease and desist order, or a postal stop order, sufficient as the basis for an indictment charging an intent to defraud?

Can intent to defraud be established when there does not appear to be any scheme, plan, method or device by which those accused might reap the benefits of the alleged scheme to defraud?

The foregoing is in essence a summary of the type of indictment returned and of the charges alleged. A complete discussion, paragraph by paragraph, appears in the enclosed memorandum.

MEMORANDUM AND ANALYSIS OF FACTS, CHARGES AND DEFENSES IN THE MATTER OF UNITED STATES OF AMERICA VS. J. KENNETH EDLIN; JAMES W. BRIDGES; FIRST

COLONY SAVINGS AND LOAN ASSOCIATION, INC., A MARYLAND CORPORATION; ROSABELLE EDLIN; AND JACKSON D. RAINS.

Introduction

Prior to the analysis of the indictment together with the defenses or explanations of the allegations in the indictment, it must be understood that the indictment is one based solely upon an alleged *intent to defraud*, and there are no allegations of actual fraud set forth in the indictment nor is alleged that any investor has received a lesser return than that which was advertised and which was expected from his investment. It is believed that the actions of the defendants prior to indictment should certainly, to a great extent, be indicative of the question of intent by the defendants, and for that reason as a major factor bearing on the question of intent, we believe it to be important that the defendants made available to the United States Postal authorities and to the Grand Jury any and all documentary evidence sought by the Grand Jury or Postal Inspectors, and that the defendants readily made themselves available to the Grand Jury and did travel at their own expense substantial distances for the purpose of voluntarily appearing before and testifying before the Grand Jury and that during the investigation and the taking of testimony by the Grand Jury defendants, discussing documents not having been requested by the Grand Jury, voluntarily traveled long distances to acquire additional documents and return to again appear before the Grand Jury. Certainly, this spirit of cooperation is not indicative of any criminal intent or any belief by any defendant that he had committed any wrongful act, or certainly that he had intended to commit any wrongful act.

It should also be noted that this investigation and these charges were resultant from the activities of the United States Savings and Loan League together with a disgruntled employee, James W. Bridges. Bridges had been an associate of the defendant J. Kenneth Edlin, and a

primary party to all the activities of First Colony Savings and Loan Association, Inc. prior to his resignation and demand of substantial sums of money from J. Kenneth Edlin or First Colony Savings and Loan Association. When the demands of Bridges were refused he contacted the United States Savings and Loan League, exchanged correspondence with them, and further contacted various Governmental agencies including the United States Post Office Department, and by correspondence further threatened other officers of the association, advising them that he was making such charges and did, in fact, cause a number of them to resign from the fear of adverse publicity. It should also be noted that it will appear from the analysis of the indictment and charges appearing hereafter, that this man Bridges was primarily responsible for the language and advertisements complained of by the Grand Jury, and a study of the technical niceties of this indictment and the complete absence of any individual who has in fact been defrauded, or is even alleged to have been defrauded, and the absence of any method or means alleged or charged by which the defendants might divert to themselves the funds alleged to have been acquired with an intent to defraud, clearly demonstrates that this indictment has resulted primarily from the charges of a disgruntled, vengeful, ex-associate of certain of the defendants and from pressure brought by a league representing the major competitors of the defendant corporation.

As a further bearing on the question of intent, it should be remembered that the defendant Jackson D. Rains was an employee, with an excellent accounting background, obtained through an employment agency having no previous contact or relationship of any kind or nature with any of the other defendants, and as such began work for the sum of $125.00 a week which continued his salary until the death of another employee shortly before the indictment, at which time Mr. Rains was promoted and then drew a salary of $200.00 per week, but it is most important to note that Mr. Rains did not have any proprietory interest, direct or

indirect, in any of the associations or businesses involved, mentioned, or in any way concerned with the indictment or any of the activities complained of in the indictment.

The defendant Rosabelle Edlin served in the capacity of a stenographer, on call for unlimited hours; that she did serve as a member of the Board and Secretary of the corporation but that her total compensation was only $150.00 per week; and she, like Mr. Rains, had no proprietory interest, direct or indirect, in any of the firms or corporations mentioned or concerned with the activities covered by the indictment.

That the defendant J. Kenneth Edlin during the period covered by this indictment received no compensation, of any kind or nature, from First Colony Savings and Loan Association, Inc., he received no salary, no fees for services, and the only monies received by him were reimbursement of actual out-of-pocket expenses expended on behalf of and for the benefit of First Colony Savings and Loan Association, Inc.; and that Mr. Edlin had no proprietory interest in any of the firms or corporations having to do with any of the matters alleged in the indictment, and that the only reward he might anticipate for the time and energy expended by him during this organizational and initial period of business of First Colony Savings and Loan Association, Inc. would be such fees as he might be able to charge in the future for his services when the corporation was well established and financially strong, or the increased value of stock interests of members of his family in whose welfare he was, of course, greatly interested, and it must be noted that the stock held by members of his family would have no value until and unless each of the persons alleged in this indictment as persons whom it was intended to defraud, had first received their proper dividends as declared by the corporation, and their were sufficient assets or monies available to redeem at par the total investment of each and every the persons alleged as individuals whom it was intended to defraud.

Under these circumstances, it is respectfully suggested that if this, in fact, was a scheme devised with an intent to defraud, that it is probably unique in the annals of fraud in that the alleged perpetrators of this fraud could receive no reward nor remuneration for these activities until each and every of the persons whom it was alleged it was intended to defraud had, one, received their proper benefits; and two, received back their investment, and after the happening of these events then it was conceivable that other persons might benefit, and it becomes obvious that the only benefits could only arise and be distributed if, in fact, no one was defrauded, and on this basis the alleged intent to defraud seems to be patentedly an absurdity.

It should be further understood that the formation of First Colony Savings and Loan Association was not in fact the original plan or scheme of any of the defendants to this cause, but rather its formation was almost accidental or coincidental. Mr. Edlin, one of the defendants, who together with Mr. Bridges, another defendant, was active in First Continental Mortgage Corporation, a Florida corporation engaging in very profitable mortgage operations, had been contacted by an acquaintance of his in Washington, D.C., with whom he had previously done business, in regard to the possibility of First Continental Mortgage Corporation financing retirement villages in Maryland, and did travel to Washington for the purpose of discussing such financing and inspecting sites for such villages. During a conference in Maryland and seeking to ascertain the competition in the area of Calvert County, particularly having in mind at that time Dares Beach, being developed somewhat as a resort area, Mr. Edlin inquired as to the availability of financing from savings and loan associations and was advised by attorneys and residents of that area meeting with him that the area was completely unserviced by any savings and loan association, and it was then suggested by these persons that Mr. Edlin form, or gather a group to form, a savings and loan association for that area. He advised that his understanding was that the

formation of such a company took a substantial period of time which he did not feel that he could devote, and was immediately advised that under the Maryland statutes this was not the case, and that if he were willing and if his associates were willing a charter would be readily obtained and would in fact be processed for him by the local residents. Mr. Edlin then conferred by phone with Mr. Bridges, advising him of the information he had received from these Maryland residents. Mr. Bridges was most enthusiastic and Mr. Edlin then authorized the individuals to proceed with the formation of an association, at which time First Colony Savings and Loan Association, Inc. was formed.

Indictment Paragraphs 1 Through 4

(No Paragraph Numbered 5)

Paragraphs 1 through 4 of the indictment are the introductory paragraphs of the indictment, identifying the individuals and corporations alleged parties to or concerned with the matters of the indictment, and further sets forth the organization and incorporation of First Colony Savings and Loan Association, Inc., the alleged vehicle of the intent to defraud, with particular emphasis upon the creation in the By-Laws of two classes of stock, Class "B" stock to constitute the controlling capital stock of the corporation and Class "A" stock identified as the shares of stock to be sold and distributed to the persons whom it was allegedly intended to defraud, and further allegations as to the election of officers and board members of First Colony and general allegations of an intention to disseminate, publish and distribute misleading advertising.

The fallancy of the Government's contention that the capital structure of the corporation was devised as a method or means of carrying out an alleged scheme to defraud, and was created with an intent to defraud, is quickly answered, by an analysis of the capital structure and the rights and the privileges of the two classes of stock granted by

their charter. This analysis quickly discloses that rather than creating a vehicle of fraud, the very structure complained of acted as a guarantee and a protection for those persons who it is alleged the defendants intended to defraud.

Description of Each Class of Stock with Preferences, Voting Powers, Restrictions, and Qualifications Thereof

Under the Amended Articles of Incorporation, shares of Class "A" stock are known as "Savings Account Shares". The owners of Class "A" stock are entitled to one vote for each one, and *not one vote for each share of Class "A" stock owned;* with the proviso, however, that if two consecutive quarterly dividends payable upon Class "A" stock shall be passed or omitted, then the owners of Class "A" stock are entitled to one vote per share of the Class "A" stock owned by them, until two consecutive quarterly dividends have been paid, at which time the owners of Class "A" stock shall again be entitled to only one vote for each owner.

Owners of Class "A" stock are entitled to be paid a quarterly dividend, as the Board of Directors may declare, which is payable on the first days of January, April, July and October. In addition thereto, such owners are entitled to be paid such "supplemental dividends" from the earnings of the corporation as the Board of Directors in their discretion may declare from time to time.

In the event of dissolution, the owners of Class "A" stock shall receive the par value of their stock, plus accrued dividends, before any distribution shall be made to the owners of Class "B" stock.

Under the Amended Articles, Class "A" stock is redeemable at the price of $1.00 per share, plus accrued dividends, at any time the Board of Directors, in their sole discretion, may determine, upon the following terms: The

Corporation shall purchase and redeem any or all shares of Class "A" stock at the price of $1.00 per share, plus accrued dividends, upon the request of any owner, and upon tender of the passbook, certificates, or other necessary instruments.

Class "B" Stock

Shares of Class "B" stock are known and described in the Amended Articles as "Life Savings Account Shares". The owners of Class "B" stock are entitled to vote on the basis of the number of shares owned by each stockholder, with one vote for each share of stock owned.

Owners of Class "B" stock are entitled to be paid quarterly dividends as the Board of Directors may declare, and such dividends are payable on the first days of January, April, July and October, provided the total amount of such dividends shall not exceed the total amount of dividends paid to owners of Class "A" stock for the same quarterly period.

In the event of dissolution, and after owners of Class "A" stock have been paid the par value of their stock, plus accrued dividends, the owners of Class "B" stock shall be entitled to receive all remaining assets of the corporation.

Class "B" stock is subject to redemption upon the following terms:

The Board of Directors, in their discretion, may call and redeem outstanding shares of Class "B" stock on a pro-rata basis, apportioned among all the owners of such stock, at par value or book value of such shares, whichever value is greater, plus accrued dividends, provided that not more than a total of 25% of the outstanding Class "B" stock shall be called and redeemed upon the foregoing terms in any fiscal year.

Discussion

Certainly, the provisions as above set forth providing for and requiring the redemption at par of the Class "A" stock, together with accumulated dividends, as a pre-requisite to any withdrawal by the Class "B" shareholders, was a built-in prohibition preventing the owners of this "B" stock from withdrawing, syphoning off, or raiding the assets, capital or surplus of First Colony without first making adequate and profitable provision for the investors in Class "A" stock, being those persons identified by the indictment as those intended to be defrauded, and that the success of this venture was an absolute necessity before any profits could be realized by the owners of the Class "B" stock complained of in the indictment. And it might further be noted that no dividends have ever paid to the owners of Class "B" stock, although upon occasions such dividends have been declared and in turn waived by the owners of Class "B" stock.

Reference in the indictment to the election of officers and directors is facetious, to say the least, in that basically it seems to complain that the controlling stockholder sought to elect persons to the Board in which that stockholder had confidence. If this be an element of fraud, most assuredly the major stockholders in many corporations are likewise guilty. The indictment also carefully avoids the mention of the election to the Board of various individuals, including attorneys, residing in, maintaining offices in, and well respected in the District of Columbia.

INDICTMENT PARAGRAPH 6

Paragraph 6 constitutes solely general unsupported allegations, more particularly set forth and alleged with reference to exhibits in subsequent paragraphs, and this paragraph for that reason requires no discussion.

INDICTMENT PARAGRAPH 7

Paragraph 7 sets forth the enactment of a corporate resolution declaring a dividend for the first quarter of 1958 at the rate of 5% per annum, and alleges this as fraudulent or misleading on the grounds that there was no earned income, and that no dividend would in fact be paid for the first quarter of 1958, and that there would be no current rate of dividend when advertising commenced.

Discussion

Class "B" shares of stock of First Colony were purchased by First Continental Mortgage Corporation at a premium of 25 per cent, creating a paid-in surplus rather than earnings. At the time of the declaration of the dividend, this dividend was declared from paid-in but admittedly not earned surplus. There was at that time only one stockholder, which stockholder had full knowledge of all of the activities and of the complete financial condition of First Colony. There was not then, nor is there now, any accepted or established definition of the term "current dividend." It is suggested by some that this means the last dividend paid; others state it is the last dividend paid from earnings; and still others contend that the word "current dividend" refers to the dividend intended and expected to be paid for the quarter or dividend period following the advertisement. Certainly, no stockholder was deceived. This author (an attorney) was present when subsequent to the declaration of the dividend, First Continental Mortgage Corporation, through its officers, and because of its interest in the future of First Colony and its desire to see the growth of that association, voluntarily decided to waive the receipt of this dividend, and can state of his own knowledge that this waiver had not been discussed nor considered at the time the dividend was declared; that the decision was based upon the desire to improve and strengthen First Colony and not with any intention to deceive or mislead. The absence of any recognized definition to support the Government's

contention on the use of the phrase "current rate" is without question. No such definition may be found in any recognized authority. Exhaustive research has been made of commercial dictionaries, legal dictionaries, and legal works defining both words and phrases. No such definition can be found. In court proceedings, expert witnesses have testified to utter confusion as to the actual meaning of this phrase.

INDICTMENT PARAGRAPH 8

Paragraph 8, with sub-Paragraphs a, b, c and d, describes a newspaper ad in the *Miami Beach* (*Florida*) *Sun, The Miami Herald, The Miami Sunday News,* a radio broadcast of Station WKAT of Miami Beach, and a letter alleged to be mailed by First Colony, and a brochure; copies of the newspaper advertisement, letter and brochure being attached respectively as Exhibits "A", "B" and "C" of the indictment, each of which is alleged to be misleading by reason of its reference to a "5% per annum current dividend". Paragraph d further charges misrepresentation, complaining of the phrase "select first mortgages", "mortgages must qualify for insurance of both principal and interest by an independent corporate insurance com[illegible]y".

Discussion

Insofar as the advertisements complained of make reference to the use of the phrase "5% per annum current dividend" as being misleading, the prior discussion of this term should suffice, and we can only again emphasize that there is no standard recognized definition for this term and it is respectfully submitted that there is no basis or reason to believe or presume that the general public has any specified interpretation of such phrase; or in what manner, if any, they might be misled by its use; or in what manner, if any, any of the defendants to this cause might have intended to mislead. Most assuredly, anyone reading this advertisement would presume that they were to receive

a 5% dividend upon their investment in First Colony, and it is not alleged or charged that they did not receive such a dividend, and it may be unequivocably stated that each and every Class "A" stock investor (those whom it is alleged was intended to defraud) have in fact never received dividends of less than 5% upon their investment.

The other features objected to in Paragraph d of Paragraph 8 of the indictment are reiterated and set forth in future sections of this indictment, and for the sake of clarity and conciseness will be dealt with in the subsequent portions of the indictment where these allegations are more lengthy and more precise.

Indictment Paragraph 9

Paragraph 9 alleges and charges that the defendants advertised contrary to the advice of counsel, and continued advertisements notwithstanding opinions of counsel that such advertisements were misleading.

Discussion

Paragraph 9 of the indictment is without any foundation in fact. At no time did First Colony ever receive any opinion from any counsel advising them that their advertisement was misleading or fraudulent, or would in fact deceive the public.

The Government had apparently based this paragraph on a letter received from one of the association's Maryland counsels, who stated in reference to a particular ad that he thought possibly that this particular ad might be misunderstood by some person or persons reading the ad. The opinion did not state that it was in fact misleading, that it would mislead the general public, but rather, as stated, that it might possibly mislead some person reading the advertisement.

It is respectfully submitted that the drafting of advertising so that no person reading it might possibly misin-

terpret would be an onerous burden, which would soon eliminate from our economy those engaged in the advertising field. An advertisement in essence must be drafted to meet the general public and cannot be drafted for general distribution to try and reach the exception, or that few that might misconstrue or misinterpret. Certainly, with the confusion of the American language, the double meanings of many words, almost anything written may possibly be misunderstood by someone someplace. Their understanding may well be reached by what they wish to understand, by their educational level, by colloquialisms of their particular community, and national advertising is obviously generally devoted to the use of terms generally accepted or used in the industry being advertised, and we respectfully submit that the words "current dividend" are generally accepted as an expression of the remuneration to be received by those investing in an association at the time of that advertisement. Surely the general public does not construe such an advertisement as meaning, "This is what the association paid last time, and if you're lucky they may pay it again." It is the opinion of your author, and it was the opinion of the defendants in this cause, that the phrase "current dividend" referred to the dividend that would be paid and that the investors might rightly expect to be paid, and certainly the phrase did represent the dividend that was paid and received by the investors reading the advertisements complained of.

Indictment Paragraph 10

Paragraph 10 of the indictment deals again with the payment of dividends and the use of the phrase "current dividend", and deals specifically with the second dividend declared and advertised by First Colony, and alleges that a specific transaction having to go with the purchase by First Continental Mortgage to and for the account of First Colony, of a first mortgage on property in Broward County, Florida, and thereafter sold by First Continental Mortgage for the account

of First Colony at a profit of approximately $3,900.00, said profit arising from the fact that the mortgage was purchased at a substantial discount and sold to an individual investor at par, which investor was not interested in, had no proprietory interest or interest as an employee or otherwise with either First Continental Mortgage Corporation or First Colony. It is contended by the Government that this transaction was entered into solely for the purpose of acquiring income so that a dividend might be advertised and paid, and further makes reference to accounting practices more fully dealt with subsequently in the indictment. We will deal here only with the propriety of the transaction of the purchase and sale of the mortgage and the profit therefrom.

Discussion

The basic objection in this paragraph 10 of the indictment again revolves around the use of the word "current dividend" and the attempt to give some explicit definition to that term, and from this standpoint has been previously and we believe adequately discussed.

At the time complained of, First Continental Mortgage Corporation was the major stockholder in First Colony Savings and Loan Association, Inc., and was, of course, of necessity vitally interested in the welfare and future of First Colony. First Continental at that time had been purchasing with regularity mortgages in a subdivision in Broward County, Florida, and at this particular time First Colony had acquired a small number of investors in the Class "A" stock (those persons whom it is alleged there was an intent to defraud), and First Colony had a small sum with which to commence its investments. It had been the intention of First Continental Mortgage Corporation that if Colony grew fast enough and had sufficient sums to invest, to waive its right to future investments in this Broward County project and allow the very lucrative investments to be made and entered into by First Colony,

but as time passed the association had grown somewhat slower than anticipated and at the time complained of had, as previously stated, only a small amount to invest. At this time there was available for purchase one of the mortgages in this subdivision, and First Continental Mortgage Corporation did then offer to purchase said mortgage for and at the account of First Colony Savings and Loan Association and further to without charge sell to and for the account of First Colony said mortgage. First Continental then purchased a mortgage on certain improved real estate being a residential building, and generally known as the Freel mortgage, at and for the sum of $5,000.00, which mortgage was subsequently for the account of Colony sold to one Edward King, a resident of the State of Florida, for the sum of $8,920.21, making a net profit by the sale of the mortgage of $3,920.21, which sum was pursuant to the agreement between Continental and First Colony, deposited to and became profits of First Colony Savings and Loan Association. The Government contends, rather unrealistically, that this was a false and fraudulent transaction because it was entered into for the benefit of First Colony and allegedly for the purpose of establishing an account from which dividends might be paid. Most assuredly, this is the very reason for which any savings and loan association either loans money or purchases a mortgage; namely, to get profits from which to pay dividends to its investors, and the day that it fails to pay dividends to its investors is in all probability its last day of existence. Surely, this intent to make money to carry out your corporate obligations is hardly evidence of fraud.

The Government cannot contend that this was a transaction falsely created in order to have profits. As previously stated, the investor or purchaser of this mortgage had no relation or obligation to any of the corporations or individuals involved, and further this was merely one of a series of mortgages purchased and sold in a like manner for First Continental, and apparently the criticism seems to lie in the fact that Continental, as a major stockholder

in First Colony and with the interests of First Colony as prime concern, saw fit to waive its right to enter into an advantageous transaction and allowed First Colony to enter into the transaction instead. It would seem better that the parties concerned with First Continental Mortgage Corporation should be acclaimed and credited with their good will and their willingness to forego a profitable transaction so that this young growing corporation might receive the benefits of this transaction, and in turn pass them along to their many investors, excluding from those rewarded by this transaction First Continental Mortgage Corporation, as its major stockholder and those who might benefit by the growth of First Continental Mortgage Corporation.

This Paragraph 10 further makes reference to alleged expenses in excess of the profit of $3,920.21, which question of expenses is subsequently dealt within this indictment, in an attempt to discredit certain recognized accounting practices indulged in by First Colony Savings and Loan Association and will, of course, be dealt with in the review of that portion of the indictment.

Obviously, the charge that there were no profits or earnings in First Colony at the time of the payment of this dividend is erroneous and apparently results from a misunderstanding of the facts by the Government, and the only question properly raised and not present in this paragraph would be accounting practices, which will, of course, be dealth with where they arise in the indictment.

Indictment Paragraph 11

Paragraph 11 is a mere allegation, again complaining of dividends allegedly not from earned surplus (disregarding the profits of the Freel mortgage), and again attempting to create this unexplained and unsubstantiated definition of "current dividend." The general nature of the allegations of this Paragraph 11 requires no further discussion.

INDICTMENT PARAGRAPH 12

Paragraph 12 of the indictment consists of general introductory language and Paragraphs a, b, and c, each of which paragraphs deals particularly with newspaper advertisements, and a Paragraph d referring to a brochure which was mailed and distributed by First Colony. Paragraph a of 12 is a newspaper advertisement, again advertising 5%, and further makes reference to a policy of insuring mortgages, of careful selection of mortgages, or relentless shopping of mortgage markets. The advertisement in Paragraph b merely again represented the 5% current dividend, and Paragraph c describes a newspaper ad, again complaining only of the representation of a "5% per annum current quarterly dividend", and the brochure described in Paragraph d was in essence a longer version of the newspaper ad complained of in Paragraph a.

Discussion

We discuss these paragraphs somewhat out of order for the sake of brevity, and Paragraphs b and c being merely a furtherance of the Government's contention in regard to the phrase "current dividend" have been previously, and we believe adequately, discussed.

The Paragraph a, while again complaining of the phrase "5% current dividend", further challenged the use of the words "insured mortgages", "shopping mortgage markets", and the "careful selection of mortgages".

The personnel of First Colony had arranged and had entered into a contract of insurance with Mortgage Guarantee Insurance Company of Milwaukee, Wisconsin, whereby that insurance company had committed itself to insure all of the mortgages of First Colony (Exhibit "B", attached hereto and made a part hereof). The advertisement was quite properly entered into on the belief and intention of all parties that their mortgages would in fact be insured pursuant to the commitment of insurance executed to First

Colony, and it might be noted that said insurance company is today in business and is insuring the mortgages of some 900 institutions, all of which are either Federally chartered or insured by the Federal Savings and Loan Insurance Corporation, this policy having been adopted subsequent to the issuance of a commitment to First Colony and after a majority interest in said corporation had been acquired by a group of ex-officers and directors of various Federal savings and loan associations and members of the Savings and Loan League.

The reference to the "shopping of mortgage markets" and "careful selection of mortgages" is a true and accurate and to say the least, a conservative, representation of the activities of First Colony, its officers, employees, attorneys and underwriters. First Colony had entertained mortgages and development loans from Florida, Maryland, the District of Columbia, and Illinois; they had carefully examined many such applications, and had religiously rejected many of these applications as not being sound or adequate security for the investment of the association's stockholders' funds. The careful, slow consideration by the personnel of First Colony is adequate evidence of their conservative, careful, and cautious attitude. Certainly, we always realize there is not a shortage of borrowers, although there may be a shortage of qualified borrowers with adequate security, and the careful consideration by Colony of these applications and the extensive areas covered is certainly concrete evidence that they did shop mortgage markets relentlessly, and that their policy was to carefully select their mortgages. The Government's main complaint as to the advertisement described in Paragraph a seems to be the hesitancy or delay exercised by this personnel, and their failure to rush in rapidly and to indiscriminately enter into mortgages. They complain that they advertised their policy of how they would operate when they did not in fact have mortgages. Would it have been better if they had indiscriminately entered into mortgages without this careful selection, and would that not have been

fraudulent, rather than the careful care and the careful selection being exercised by the personnel of First Colony.

INDICTMENT PARAGRAPH 13

Paragraph 13 merely recites issuance of Class "B" stock as overt act; requires no discussion.

INDICTMENT PARAGRAPH 14

Paragraph 14 of the indictment treats the profits from the Freel mortgage as a donation, denying same as income, and attacks the accounting of First Colony contending that the accounting practices of capitalizing operating expenses constituted a fraudulent practice, and falsely and fraudulently conveyed a misleading picture of First Colony's financial structure, and charges this alleged false accounting as the decision of the defendants Edlin and Bridges aided and abetted by the defendant Rains, and alleges this practice to have been abandoned in December 1958.

Discussion

As previously mentioned, the defendant Jackson Rains was a paid employee hired through an employment agency, and not previously acquainted with any of the other defendants or companies involved in this indictment. At the time of the employment of Mr. Rains, First Colony had no auditor and its records were being maintained by a bookkeeper. One of Mr. Rains' first assignments was to set up the books and records accounting-wise of First Colony. After analyzing these records Mr. Rains advised that in his opinion the proper accounting practice to be used by First Colony would be to capitalize the organizational expenses of the corporation, representing that this was generally done when corporations first opened for business on the theory that necessarily high expenses of first introducing a corporation into business were a necessary asset of the corporation, and were generally the very

basis from which it produced future income and business. During this period of time, at the request of one of the directors of Colony—an attorney practicing and residing in the District of Columbia—a Washington accountant picked by this Washington director was called in to vertify the auditing practices of Colony, and the only change recommended by him of Mr. Rains' accounting procedures was to divide this item into organizational and *pre-opening* expenses.

Mr. Rains had advised Bridges and Edlin that these were the accounting procedures that he recommended, and was then instructed that he was in charge of accounting and that if that was the proper method to be used, that he was to prepare the books and records of Colony in that manner, which he subsequently did with the confirmation and assistance of the Washington accounting firm. It might also be noted that subsequent to this time the association voluntarily employed an independent Certified Public Accountant to audit the books and records of First Colony, which audit was in fact made and a certified statement published by this accounting firm, and we would like to further comment that the voluntary auditing by an independent public accountant of the books and records of a corporation to be used as the vehicle for a fraudulent scheme would certainly be most unusual, and the very employment of these accountants strongly, unequivocably and overwhelmingly rebuts the Government's contention that the activities of these individual defendants were in furtherance of a scheme to defraud.

The indictment comments that the capitalization of these organizational and pre-opening expenses was subsequently changed in December of 1958, and a study of the activities of First Colony quickly discloses that this accounting procedure was changed for good and sound cause.

In the latter months of 1958, First Colony made substantial sums of money constituting income, and it became apparent to Mr. Rains that First Colony's income had reached

a sum which would exceed the exemptions provided and would require the payment of income taxes if these organizational and pre-opening expenses were capitalized. First Colony, having not yet filed its first tax return, was still free under the applicaable laws and regulations to make a final choice of either capitalizing their organizational and pre-opening expenses or carrying them as a current expense. In order to avoid unnecessary taxation, thereby reducing the monies available as profits to the investors in Class "A" stock (those parties alleged as intended to be defrauded), Mr. Rains at that time, with the approval of the responsible officers of First Colony, decided to carry these expenses as current expenses and cause them to be paid, thereby eliminating any tax charges against First Colony and its profits. It might further be noted that had Mr. Rains not changed his accounting procedures at this time First Colony could have been required to make certain tax payments, but on the other hand, had the intention been to create a puffed statement and to falsely encourage investors to invest in First Colony, the continued capitalization would have provided a statement with even greater surplus and reserves, and certainly had the intention of the parties been to defraud and to mislead, the payment of taxes would hardly have deterred them from presenting a puffed and enlarged statement. A further and more complete discussion of these accounting practices and procedures is set forth in Exhibit "C" attached to and made a part of this memorandum.

Indictment Paragraph 15

Paragraph 15 refers to the resolution by the Board of First Colony declaring a dividend for the third quarter of 1958 at the annual rate of 5%, again alleging and contending there were no earning and no earned surplus which constituted the third quarterly dividend paid by First Colony.

Discussion

This paragraph again ignores the profits of the Freel transaction, presumes the accounting procedures of Mr. Rains to be improper and fraudulent, notwithstanding the recognized authorities supporting said accounting procedures (Exhibit "C"), the again basically falls into the "current rate" category, and we again refer you to our Exhibit "C" to this memorandum and previous discussions of "current rate".

INDICTMENT PARAGRAPH 16

Paragraph 16 complains of the issuance of a dividend notice for the third quarter (September 1958) containing the phrase "an excellent third quarter".

Discussion

The Government states and represents that it was intended to convey by the phrase "an excellent third quarter" unusual or excessive earnings for that period, and to further convey that dividends were paid from such earnings. It does not, however, appear that there was any such statement in the advertisement, and in fact there was none. It is contended by the employee preparing advertisements for First Colony during the period in which this advertisement was prepared, that the phrase "an excellent third quarter" was intended to convey, and that it had been his thought that it would convey, a tremendous growth in First Colony, and to substantiate his interpretation points out that during the third quarter the total resources of First Colony increased by approximately 500% and that he deemed this to in fact be an excellent third quarter, and it does not seem to be unreasonable that one preparing advertising and knowing that the association he represented had increased in size by approximately 500% in a single quarter, might well consider that there had in fact been an excellent third quarter and so state in an advertisement.

INDICTMENT PARAGRAPH 17

At this point the Government announces the abandonment of the alleged scheme by the defendant James W. Bridges.

Discussion

We again call attention to the fact that it was also at this time that Mr. Bridges commenced demanding the payment to him of substantial sums of money, threatening to go to various Governmental authorities and the United States Savings and Loan League if these sums were not paid, and the time at which he did in fact write to various members of the Board and directors of First Colony advising them that he was going to these various Governmental agencies, and did also exchange correspondence with members of the United States Savings and Loan League and did subsequently make charges against First Colony and other personnel, and it further appears that the indictment is based essentially upon the wild and vindictive charges of Mr. Bridges, notwithstanding the fact that he seems to have been burned by his own torch.

INDICTMENT PARAGRAPH 18

Paragraph 18 alleges the entering into by Colony of a $7,500.00 second mortgage to one Mr. W. Dorsey Gray of Prince Frederick, Maryland, claiming that this mortgage, being a second mortgage, was contrary to the advertised lending policies of First Colony, and that this second mortgage rendered the advertisements false and misleading.

Discussion

The $7,500.00 loan to Mr. W. Dorsey Gray was qualified and was within the over-all advertising of First Colony, which advertising at all times had been that the mortgage loans of First Colony were limited to 75% of the appraised value of the mortgaged premises, and that the Dorsey Gray

loan of First Colony, combined with the first mortgage upon this property, did not exceed 75% of the appraised value of the property, and was secured by further additional valuable security. Further, said mortgage has at all times been in good standing, all payments have been promptly met, and there can be no basis for any true objection to the underwriting policy in entering into the Dorsey Gray loan. The Gray loan further served First Colony in public relations since Mr. Dorsey Gray had an excellent credit rating and was a member of a very prominent family in Prince Frederick, Maryland, the home of First Colony, and it was believed that the fact that he was doing business with First Colony would be of incalculable value to the association and would create more good will than could be created by thousands of dollars of paid advertising.

Indictment Paragraph 19

Paragraph 19 consists of an introductory paragraph alleging generally continued advertising represented as misleading and false, and further consists of Paragraph a, b, c, and d. Paragraph a complains of an additional mailing of the "excellent third quarter" brochure discussed under Paragraph 16. Paragraph b complains of further publication of a previously discussed newspaper ad, the objection again being related to the "current dividend rate" theory of the Government already fully discussed under prior paragraphs of the indictment. Paragraph c complains of further newspaper advertisement described as substantially the same as in Paragraph b of this Paragraph 20, and the complaint again being based upon the "current dividend rate" theory. Paragraph d complains of a further mailing of the brochure, previously discussed under Paragraph 12d of the indictment.

Paragraph 19 and sub-paragraphs a, b, c, and d raise no new matters in the indictment, and all having been previously discussed are given no further consideration here.

INDICTMENT PARAGRAPH 20

Paragraph 20 complains of an additional second mortgage entered into in November of 1958 to Howard and Eileen Koven of Chicago, Illinois, of approximately $11,000.00 with monthly amortization, claiming said mortgage to be a misrepresentation by reason of prior advertisements of a first mortgage investment policy.

Discussion

The loan by the association to Mr. Howard Koven was in compliance with the advertised policy of First Colony that their mortgages would not exceed 75% of the appraised value of the mortgaged premises. The combined first Mortgage and the second mortgage of First Colony did not exceed 75% of the appraised value of the property, and this is further evidenced by the fact that subsequent to the indictment this second mortgage was paid in full and in advance by reason of re-financing where from a conservative Illinois mortgage house a first mortgage was obtained in an amount sufficient to retire both the existing first and second mortgage. Availability of this loan came to the attention of Colony because Howard Koven was the son of one Henry Koven, an attorney in Chicago, Illinois, who had rendered a great deal of assistance of First Colony and taken a great interest in its future, and who had been most considerate in his billings by reason of the youth of this association.

INDICTMENT PARAGRAPH 21

Paragraph 21 attacks the first mortgage loan by First Colony to A. I. Cassell in the sum of approximately $403,000.00, together with a commitment for construction loans for the construction of approximately 75 houses in the total sum of approximately $500,000.00 (which commitment is mentioned in the indictment, but the amount of which mortgage commitment is carefully omitted from the indictment), making the total funds

committed by First Colony for development of the real estate tract and the building of houses in a sum of approximately $900,000.00, for which sum the A. I. Cassell Land Corporation, from withdrawals from the mortgage, paid to First Colony in the prepayments of interest, and as commissions on the total loan of $900,000.00, the sum of approximately $300,000.00, and it is represented that this loan, by reason of the fact that it contemplated first the development of land, did not constitute a loan for houses and therefore constituted a violation of First Colony's advertised mortgage policies, and as such caused their advertising to be misleading and fraudulent.

Discussion

The Government in its allegations in Paragraph 21 also challenged the adequacy of the appraisals, stating them to be less than $250,000.00. In the interests of saving space, we refer to the appraisal discussion by Jackson D. Rains in Exhibit "C", attached hereto and made a part hereof, and call to the attention that the appraisals referred to by him are in the amount of approximately $500,000.00 rather than $250,000.00 mentioned in the indictment.

The Government further mentions in passing the commitment for the construction of houses, but carefully avoids the amount of this commitment, which amount was approximately $500,000.00, in an attempt to create the impression of a $300,000.00 charge on a $400,000.00 loan, when in fact the total charges of prepaid interest, commissions, costs, attorney's fees, was on the total sum of $900,000.00, which represented a loan for a substantial period of time with interest pre-paid for a full year, in order to allow the borrower sufficient time to develop his tract and produce income prior to having payments fall due. Certainly, there is a considerably different picture established when the entire amount of the committed loan of $900,000.00 is considered, than when there is considered the $400,000.00 loan

mentioned by the Government in what obviously is a misconstruction of the true facts. The Government further infers that the pre-payment of commissions was in some way or other a deceptive practice, although they do not see fit to allege or charge that it is unique, unusual, or not a practice generally followed in the savings and loan industry, and it is well that they did not for in fact the common practice in the savings and loan industry and in the banking industry is and has been to credit premiums and commissions as income earned at the inception of the loan.

It is perfectly obvious that where a raw piece of land is to be developed into a housing sub-division, that the installation of roads, water, etc., is a necessity and a prerequisite to the construction of houses, and in fact under the laws of Maryland the availability of these facilities, approved by the Health Department, is a necessary prerequisite to the recording of a plat, and it certainly seems somewhat facetious and unreasonable to take the position that since a sub-division development loan was divided into two separate loans, one for the ground development and another for the construction of houses and the initial disbursements for the development of the land, that this should be deemed a misrepresentation or a departure from the advertised policies of First Colony, is rather hard to accept. Would the mere fact of combining these two loans into one loan, so that the loan under which the disbursements came was both a housing and development loan, have changed the picture? Certainly not from a practical standpoint, although it might have made a technical difference. The drafting of this Paragraph 21 and particularly the omissions from that paragraph and the halftruths therein set forth, create grave suspicions as to the propriety of the indictment and the purposes of the indictment, and call again to our attention that this indictment resulted from the accusations and charges of an ex-associate demanding money of the association, working in close contact with the United States Savings and Loan League representing all of the major competitors of this indicted association.

For a further discussion of the progress and success of the Cassell loan and a District Court decision on the de minimis nature of the Government's complaint in regard to the two second mortgages previously mentioned, we refer you to Exhibits "D" and "E" hereto attached and made a part hereof, Exhibit "D" being a copy of the decree of the District Court for the Southern District of Florida, and Exhibit "E" being the analysis of the progress and success of the A. I. Cassell loan.

INDICTMENT, PARAGRAPH 22

This paragraph complains solely of the election of Jackson D. Rains to the Board of Directors of First Colony and his appointment as a member of First Colony's loan committee, and alleges his acceptance being for the purpose of aiding and abetting the scheme, and general allegations of this nature hardly require discussion or explanation.

INDICTMENT PARAGRAPH 23

This paragraph consists solely of general allegations charging approval by Rains, as a member of the loan committee, of the loans described in Paragraphs 18, 20 and 21 of the indictment as being acts aiding and abetting the alleged scheme to defraud, and again, being wholly general and technical in nature, require no answer.

INDICTMENT PARAGRAPH 24

Paragraph 24 again is wholly technical in nature, charging that approval by Rains and Rosabelle Edlin, as members of Colony's Board of Directors, of the loans described in Paragraphs 18, 20 and 21, constituted acts aiding and abetting the alleged scheme to defraud, and requires no discussion.

INDICTMENT PARAGRAPH 25

Paragraph 25 refers to the mailing of a dividend notice referring to "especially profitable operations during 1958" alleged to be fraudulent in that it did not

disclose or represent that the profits resulted from transactions alleged by the Government to be contrary to the advertised policies of First Colony.

Discussion

This section of the indictment objects to an ad stating that First Colony had "especially profitable operations during 1958," and appeared subsequent to the receipt of the profitable commissions and pre-paid interests in the Cassell loan, which profits were in the sum of approximately $300,000.00 and which placed Colony in a position of showing a favorable surplus as well as reserves, notwithstanding that in order to avoid unnecessary taxation Mr. Rains had deducted the previously capitalized organizational and pre-opening expenses as an expense, and apparently the objection is founded upon the Government's contention that the development loan portion of this $900,000.00 loan was contrary to Colony's advertised policies.

Even had the Cassell loan been a departure from these advertised policies (which we do not believe it was), this still could not in and of itself constitute fraud. The taking of such a position would of necessity require that the operators of any corporation publicly advertised, who might find themselves suddenly faced with an extremely attractive and profitable business transaction from which they might reap substantial profits for their investors, would be barred from engaging in this transaction in order to avoid indictment for fraud or intent to defraud. Surely, it is not the law that a profitable transaction may not be entered into unless you have first advertised that a transaction of that nature shall be your policy.

INDICTMENT PARAGRAPH 26

Paragraph 26 objects to an ad which contained the phrase "First Colony Savings mortgage portfolio is insurable," contending that the ad was designed to mislead readers to believe that the mortgage portfolio was insured.

Discussion

The advertisement complained of in Paragraph 26 appeared after the defendant J. Kenneth Edlin had noticed a previous advertisement of First Colony which contained a statement that mortgages were insured, and who had immediately upon noting this phrase suggested that this advertisement be withdrawn and advised the advertising department that the statement might be premature in that First Colony had a commitment for the insurance of its mortgages (Exhibit "B"), and that until the recording of certain plats and until proper descriptions could be provided the insuring corporation, the mortgages were not in fact insured, but that the underwriting policies were all in compliance with the commitment of insurance and that they were therefore insurable. The advertising department then prepared the brochure complained of in this Paragraph 26.

The Government's position here seems very tenuous and would seem to place the Grand Jury, or at least the draftsman of this indictment, in the position of being a mind-reader of the general public since it does not appear to be based on any logical line of reasoning. Certainly, insurance is not a field of which the public is generally ignorant in these modern times. Most assuredly there must be some people who do not know the difference between that which is insured and that which is insurable, but it does not seem very probable that in these enlightened times that one could logically take the position or the theory that the general public would believe "insurable" to mean "insured." Certainly, let us hope that the American public as a whole is not this uninformed or this ignorant of common phraseology in the field of insurance, which affects almost every business or major activity in American commercial and home life.

INDICTMENT PARAGRAPH 27

Paragraph 27 complains of a brochure circulated by First Colony containing the allegedly deceptive phrase "Our lending policy is ultra-conservative. We do not

depend on endorsers but make certain of the collateral on which we loan."

Discussion

Here the Postal Department or the Grand Jury has obviously entered the underwriting field and reached the conclusion that in their judgment the loans of First Colony were not conservative, and therefore the advertising constituted a misrepresentation. This seems to be almost a question of semantics, and obviously must depend upon an interpretation of the word "conservative." Is a conservative loan a 90% loan, as made by many lending institutions; a 50% loan, as the limitation adopted by some Maryland institutions; a 75% loan, as was the policy of First Colony? What constitutes a conservative loan? Would not the interpretation of this phrase almost vary from state to state, and in some instances from county to county? Would not the decision on a particular loan vary from banker to banker? How many times has a loan presented to one bank been refused, and accepted by another bank, and who ever met a banker who didn't think he was conservative. It hardly seems that an advertisement could be deemed objectionable by the use of so vague and uncertain a term as the word "conservative."

INDICTMENT PARAGRAPH 28

Paragraph 28 complains of an advertisement prepared February of 1959 entitled, "Growth-Progress Report, December 31, 1958", which contained certain language deemed to be misleading by the Government, as follows: "How First Colony Savings safeguards your funds. Your funds are safe at First Colony Savings and Loan. They are backed by carefully selected mortgages at 100% safety on new homes in prime residential areas."

Discussion

This particular advertisement was prepared by Bishopric Greer & Fielden and was actually published in two different versions, one of which contained a statement of January 31, 1959 on the back, the other did not. The ad consisted of many items including a graph to show the growth in the number of savers, a graph showing the growth in life insurance, a comparison of average accounts according to national figures, a description of the various savings plans, announcement of the letting of a contract for a branch officer, the architect's drawings of the office under construction, as well as the language complained of. The preparation of this ad by the advertising agency and the advertising personnel of First Colony working together was commenced shortly after the A. I. Cassell loan, which the parties all knew included the proposed construction of a project of 75 homes on a tract of land including three-fourths of a mile of beach frontage on Chesapeake Bay, and which was generally described and in fact was one of the most beautiful tracts available in Maryland for development and was reasonably accessible to the District of Columbia, and was and still is considered by all as a prime location for housing, and the only technical error that can be found in the ad would be the use of the words "new homes" since no homes were under construction and the actual construction in progress was the preparation and installation of roads and a water system for this tract of land. Each of the parties considered this as an over-all project and in their own minds, probably erroneously, considered this as a housing development since it did contemplate the construction of 75 homes. Plans and specifications for these homes were previously delivered to Colony by A. I. Cassell. It is not difficult to understand how advertising personnel, not having the advantages of the legal training that we might find in the District Attorney's Office would not realize that the use of the words "new homes" when referring in fact to homes to be built in the future, would constitute a misrepresentation. It is doubtful if very many of those who saw or who were

intended to see this particular ad would have found any substantial difference or believed any differently had First Colony prepared a ten or fifteen page brochure outlining the over-all Cassell project, and it is hard to say how this technical misuse of the two words "new homes" could have constituted a misrepresentation that would be tantamount to fraud.

Indictment Paragraph 29

Paragraph 29 of the indictment deals with a subsequent purchase by Cassell of a 48-acre tract contiguous to the original 432-acre tract of Cassell, which was purchased for the sum of $9,000.00 through an intermediate corporation and ultimately sold to Cassell subject to a $13,000.00 first mortgage, and this mortgage is challenged as a further alleged departure from the lending policies of First Colony.

Discussion

The Government in its review of the purchase of this 48-acre tract by Cassell intentionally overlooks the fact that the land prior to its purchase was farm land, used as farm land and evaluated and appraised as farm land; that upon its ultimate purchase by Cassell it became an integral contiguous part of the A. I. Cassell subdivision, having the same attributes and advantages as to the use of beach frontage and as to the improvement of the Cassell tract as did the original tract, and could not and should not be evaluated or appraised as farm land and was properly evaluated on its lot value rather than as farm land.

This particular tract by reason of its location was a necessary and integral part of the over-all development plan of the Cassell tract, and its continued existence outside of the tract was a danger to the over-all development of the A. I. Cassell properties in that it was so located that future building, construction, or development of this 48-acre tract

not in line with the planned development of the original Cassell lands could have caused a depreciation of the value of the Cassell lands surrounding this tract, the purchase of which was financed by First Colony.

INDICTMENT PARAGRAPHS 30 AND 31

Paragraphs 30 and 31 are again objecting to the use of the words "first mortgages on new homes," heretofore discussed under Paragraph 28 of the indictment.

The balance of the indictment consists of the technical naming of individuals contacted by mail, to substantiate proceeding under the mail fraud statutes.

There is further attched hereto Exhibit "A", being a review of matters not considered in the indictment, but rather of those acts and facts that do not appear in the indictment and were not covered by the Government's investigation, all of which matters we feel should be carefully considered in any review of the propriety of this indictment or any prosecution thereunder.

"[Exhibits Omitted]".

GOVERNMENT'S EXHIBIT NO. 91

(Not printed at Government expense)

CONGRESSIONAL RECORD

Proceedings and Debates of the 86th Congress
Second Session

FEDERAL SAVINGS AND LOAN LEAGUES SEEK DESTRUCTION OF COMPETITIVE "INDEPENDENTS" AND COMMERCIAL MORTGAGE INSURANCE

Speech of Hon. Thomas F. Johnson of Maryland
In The House of Representatives

Thursday, June 30, 1960

Mr. JOHNSON of Maryland. Mr. Speaker, on the 27th of May there appeared in the financial section of the Washington Star an article by one Donald B. Hadley with the shocking black headlines: "Savings and Loans Urged To Warn Public of Maryland Phonies."

This article, published under the guise of "news," virtuously identifies the "Savings and Loans" in the headlines as the members of the District Federal Savings & Loan League, assembled at that time in convention at Hot Springs, Va. The "Maryland phonies" so broadly referred to are the 427 independent savings and loan associations chartered in the Free State of Maryland.

Such headlines are shocking because of the categorical smear of the entire independent savings and loan industry of my State. And even more shocking is the fact that a great newspaper such as the Washington Star should publish this unwarranted generalized slander.

Mr. Speaker, for nearly 100 years Maryland's independent savings and loan associations have served tens of thousands of small investors. They have encouraged home ownership with many millions of dollars of loans to Mary-

land citizens. And at the end of 1959 their combined assets amounted to more than $1,300 million.

In these headlined charges, however, there was no editorial qualification of any kind. Only in the body of the news story itself was a feeble attempt made at justifying the malicious phony characterization by quoting the District Federal Savings and Loan League' principal speaker, who declared that several Maryland associations had been prosecuted for mail fraud and misrepresentation in the last year.

What are the true facts? Let me point out again that there are over 400 independent savings and loan associations doing business in Maryland, and exactly three of them have been indicted and none convicted.

I personally do not know any of these indicted institutions, nor any of the circumstances leading to their respective indictments. I hold no brief for any of them one way or another. But I do submit that under our democratic processes of justice an indictment is one thing, conviction another; and guilt is not implied by indictment.

Nevertheless, in spite of this fact that only a fraction of 1 percent of the total is in jeopardy, over 99 percent of the industry is held up to public suspicion.

Mr. Speaker, a special subcommittee of this House under the chairmanship of our distinguished colleague, the gentleman from California [Mr. Moss], is now conducting a hearing, which began nearly 4 weeks ago, on the activities and management of the Federal Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation which it supervises. It is from these agencies that the Federal savings and loan associations derive their labels as "Federal" and "federally insured." It is from these Government instrumentalities, created by the Congress 26 years ago in an emergency, that savings and loan associations which have chosen to do so, are granted this so-called insurance of their depositors' savings up to $10,000

for each account. The Federal associations, in turn, advertise to the public that such savings are "insured by a permanent instrumentality of the U. S. Government." Of course, that is a good merchandising technique; and, most certainly, the impression has been created in the public mind that such savings accounts are actually guaranteed by the U. S. Government itself. This, I am told, is not a fact by statute or by any other legal provision.

It is not my intention, however, to analyze at this time the legislation, regulations, or lack of them pertaining to the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation. But since this newspaper article to which I am addressing myself does emphasize the factor of "Federal insurance" as further justification for an attack on the independent institutions of Maryland which are not "federally insured," I am constrained to deal with the subject. I present, therefore, the following statements for the record.

First, let us hear what this Washington Star article reports the District Federal Savings & Loan League's principal speaker has to say on the subject of insurance. He says, and I quote:

> During the past few months all of us have received or have been advised of mailing pieces sent out by these Maryland associations which purport to be commercially insured and which advertise comparatively high rates of dividends.

And a little further down in the story he declares:

> I believe one of our primary responsibilities to the public is to inform them by every means available of the significance of the Federal Savings and Loan Insurance Corporation and what it represents.

That is what the spokesman for this trade association of the District Federal Savings & Loan Associations had to say in behalf of their own advantages of "Federal insurance" in this article in the Star.

Now let us hear a portion of what our distinguished colleague, the gentleman from California [MR. KING], had to say on this subject in a speech to this body on the 19th of May under the heading "False Confidence in Federal Savings and Loan Insurance Corporation," and I quote:

> Over its 25 years of operation, the Federal Savings and Loan Insurance Corporation has only about $305 million reserves to insure over $50 billion of savings. Of this $305 million, the Insurance Corporation has committed over 25 percent to cover a false emergency created by its own unwarranted acts, leaving three-quarters of its assets to protect the remaining nearly 4,000 savings and loan associations. Its own reserves at the most are less than three-quarters of 1 percent of the amount insured.

I might add, Mr. Speaker, that not one single line of MR. KING's remarks was published in the Washington Star, or, for that matter, in any District newspaper.

I believe, Mr. Speaker, that at this point we may reveal the real theme of the story behind most of these vicious attacks on Maryland's independent savings and loan industry. The remarks of the Federal League's speaker which I have quoted spell out the word "competition" in letters even larger than the Star's misleading headlines. For example, he uses the phrase, and I quote, "these Maryland associations which purport to be commercially insured and which advertise comparatively high rates of dividends." And next he extols the virtues of so-called Federal insurance. He says, in effect, and I quote: "In spite of the fact that we pay our depositors less dividends than some Maryland independents, we are federally insured, and they only claim to be insured, and commercially insured at that. That's bad. Look out."

It is difficult to believe that this trade association advocate of Federal insurance does not know that some of these Maryland associations which purport to be commercially insured are, indeed, commercially insured.

Furthermore, what is wrong with paying citizens as much return on their invested savings as good management can pay? What is wrong with commercial insurance? It has been with us for a long time. The inference, of course, is that Maryland's independent savings and loan associations are shady operators instead of well-managed small businesses, and that commercial insurance, devised and underwritten by free enterprise, is less attractive than this so-called Federal Insurance.

I ask at this point, Mr. Speaker, under what imaginable circumstances in any State of this Union would any kind of a commercial insurance company be permitted to operate for a single day if its reserves were less than three-quarters of 1 percent of the amounts insured? And yet this spokesman for the Savings & Loan League holds up to public suspicion the integrity and bona fides of commercial insurance.

On June 2, the gentleman from California [MR. KING], who has studied savings and loan and other governmental financial operations for many years, and whose committee investigations have brought about legislation correcting abuses and mismanagement in certain of these executive branches of Government, made another statement on this floor on the conduct of this "Federal insurance" business and I quote:

> How any savings and loan association manager can face the public and assure the investor that the conduct of the management of the Federal Savings and Loan Insurance Corporation is a safeguard to their savings is beyond my comprehension.

At last, then, we have still another chapter in this curious story of competition between the large Federal associations in the city of Washington and the small independents doing business for the most part in 67 small towns throughout Maryland.

In order that there be no misunderstanding of this terminology of insurance as it has been used here, however,

let me point out that whereas the Federal type represents that it insures literally the savings of depositors—the liquidity of an association, in other words— the commercial insurance referred to is designed to protect an association's mortgage portfolio as to principal, interest, and foreclosure costs.

Thus we have a situation of competition, pure and simple. Competition between big business and small business. And today there is greater competition in the money market throughout the Nation and the world than ever before.

I submit that the healthy effects of honest competition are no less today than they were some 100 years ago. But I decry the tactics of federally nurtured big business which are calculated to stifle competition and to destroy ultimately hundreds of small businesses, and to confuse small investors in my district and in my State of Maryland.

Unfortunately for the public, few of the facts of this deplorable situation upon which I have touched so briefly are ever publicized. I have been told that most Washington daily newspapers will not even accept paid advertising from a Maryland independent savings and loan association. And this, I further understand, extends to the major radio and television stations as well.

Mr. Speaker, I have sought in these remarks to be entirely objective with respect to the pros and cons of this situation. In this defense of a basic and honorable industry of my district and my State I have endeavored to present facts and figures.

It is my sincere hope that on the basis of these facts the newspapers of the Nation's Capital will have a care before participating again in any such irresponsible effort to create public doubt as to the integrity and honesty of so many good neighbors, business establishments and citizens alike.

I have the honor to represent Maryland's First District,

and it was in this district that the Free State was first settled in 1631. Maryland is the seventh of the Original 13 Colonies to form these United States. We are proud of our heritage of fair play and tolerance in Maryland. We expect no more in return from anyone. We can settle for no less.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES v. JOHNSON, et al.

Criminal No. 26067

DEFENDANT EDLIN'S INSTRUCTION NO. 14

You are instructed that in this case the charges made against the Defendants rest upon circumstantial evidence. When, as in this instance, circumstances are relied upon to prove a particular fact or guilt beyond a reasonable doubt, such circumstances must be consistent with guilt alone and may not be reasonably consistent with innocence. In other words, if circumstantial evidence points two ways, like an ambiguous signboard, you cannot put any reliance on it. It must all point one way. It must all be consistent only with guilt and it must exclude the hypothesis or theory of innocence. (R. 458)

DEFENDANT EDLIN'S INSTRUCTION NO. 14a

(Alternative)

You are further instructed that you must find a defendant not guilty as charged if you find that the evidence is such that it is as consistent with innocence as with guilt. If you merely find that the evidence, while consistent with guilt, can also be found by you as consistent with innocence, then you must find the defendants not guilty as charged. (R. 459)

DEFENDANT EDLIN'S INSTRUCTION NO. 18

You are instructed that the mere fact that a speech was delivered by a Congressman in the House of Representatives is not in itself improper. You are further instructed that if such speech was prepared by some other person or is

made at the urging of some other person, that fact in and of itself or those facts in and of themselves do not constitute an offense. Under the law as determined by this Court, you are instructed that if, and only if, you find beyond a reasonable doubt that Congressman Johnson agreed to receive or did receive with a knowing conscious criminal intent compensation for delivery of the speech which was admittedly and concededly made in the House of Representatives on June 30, 1960, then and only then could an offense be sustained under the first count.

Accordingly, under the principles which this Court has determined as applicable to this case you are instructed as follows: If you have a reasonable doubt as to whether or not there was an agreement between Congressman Johnson and the other defendants to receive compensation for delivery of a speech in the House of Representatives, or if you have a reasonable doubt as to the criminal intent, then as to that aspect of the case you are instructed that, having a reasonable doubt about such fact, there has been no offense found. (R. 463)

DEFENDANT EDLIN'S INSTRUCTION NO. 18a

In reference to the speech aspect of the Conspiracy Count you are instructed that, under the law as determined by this Court, there is no offense unless the agreement allegedly entered into specifically contemplated that the sole motive and purpose for the speech was payment or promise of payment of compensation. (R. 464)

DEFENDANT EDLIN'S INSTRUCTION NO. 18b

(Alternative)

In reference to the speech aspect of the Conspiracy Count you are instructed that, under the law as determined by this Court, there is no offense unless the agreement allegedly entered into specifically contemplated that the sole motive and purpose for the speech was furthering the sole interests of the Defendant Edlin or Robinson or both, and that if the alleged agreement as charged had any other purpose, there

is no conspiracy as charged. If the motive of the defendant was simply to have expressed a general point of view under the law determined by this Court there is no offense in this aspect of the case. (R. 465)

DEFENDANT EDLIN'S INSTRUCTION NO. 18c

Under the law determined as applicable by this Court a mere agreement to pay or actual payment of campaign contributions does not constitute compensation or consideration as to Count I. If you find that the alleged agreement, as charged in Count 1, if there were such an agreement, had as its terms the promise to make campaign contributions and if you find that moneys paid to Congressman Johnson were to be paid as campaign contributions, and were in fact campaign contributions, they you are instructed that such promises or payments (if made) would not be compensation or consideration sufficient in themselves to sustain a conviction under Count 1. (R. 466)

DEFENDANT EDLIN'S INSTRUCTION NO. 18d

Under the law as determined by this Court, the mere promise of future law business, if made, is not in itself sufficient consideration to sustain a conviction under Count 1. Therefore even if you find the defendant promised Congressman Johnson future law business this is not in itself sufficient consideration to sustain a conviction under Count 1 known as the conspiracy charge. (R. 467)

DEFENDANT EDLIN'S INSTRUCTION NO. 19

You are instructed that with reference to that aspect of the First Count—the so-called conspiracy Count—pertaining to the visits to the Department of Justice, it is undisputed by the Defendants that certain visits and contacts were made by Congressman Johnson and Congressman Boykin to the Department of Justice officials.

You are further instructed that the mere fact that there may have been an agreement between the parties with

reference to such visits, in and of itself, is not in and of itself improper, and is not in and of itself sufficient to sustain a conviction.

Under the law which this Court has determined applicable to this case, you are instructed as follows:

1. If you have a reasonable doubt as to whether or not the Defendant, Thomas Johnson, advised the Department of Justice or put the Department of Justice officials upon notice that he was acting in the capacity of an attorney at the time of the visits with the officials of the Department of Justice then you are instructed that if he did so advise, the said officials, or if you have a reasonable doubt as to whether he did so advise the officials of the Department of Justice, or if you have a reasonable doubt as to whether or not the Department of Justice officials were put on notice that Congressman Johnson was acting in the capacity of an attorney then you are instructed that as to that aspect of the case there is no offense under the charges of this indictment.

2. Further, even if you find that the Defendant Thomas Johnson did not disclose or give notice of the fact that he was acting as an attorney to the officials of the Department of Justice, if you so find the facts, then you are further instructed that no offense has been committed if such payments as Congressman Johnson may have agreed to receive or did receive or such compensation as Congressman Johnson agreed to receive or did receive, related to legal services performed by him and did not relate to such visits. Therefore, you are instructed that as to the first charge of this indictment which is a charge of conspiracy or an agreement, if you find that the evidence of compensation in this case as presented by the Government related to legal services performed by Congressman Johnson and do not relate to payment or compensation for visits to the Department of Justice or if you have a reasonable doubt as to such fact, then you are further instructed that no offense has been committed.

As to the remaining defendants, you are further instructed that unless you find beyond a reasonable doubt, they knowingly and willfully and with a wrongful criminal intent, based upon actual notice, conspired with Congressman Johnson actually knowing in what manner he was acting, then as to such defendant who did not so act or have actual notice, you are instructed no offense has been committed.

As to that aspect of the case which related to the land transactions of Virginia and Maryland tracts, you are specifically instructed that it is proper and is not violative of the law for a Congressman, whether acting individually or as a representative or a force in a corporation to buy, sell, or in any way deal with real estate. You are not to consider that there is anything improper in and of itself if a Congressman so acts nor is it improper for any person or firm to deal with a Congressman in such regard. Accordingly, you are instructed that under the principles which this Court has determined as applicable to this case the law is as follows:

1. If you have a reasonable doubt as to whether or not the land transaction by and between the corporations involved herein acting through the persons who were either their agents or interested parties was a bona fide or good faith transaction, then you are instructed that as to that aspect of the case there has been no offense charged or shown. There could only be an offense if the agreement with respect to the land transactions was entered into as a knowing, intentional means of payment to the Congressman for making contacts and holding meetings with officials of the Department of Justice with the intent to corruptly influence their decisions. In other words, if you have a reasonable doubt as to whether or not the land transactions were designed to be compensation for the activities of Congressman Boykin and/or Congressman Johnson or both, as distinguished from a land transaction between two contracting parties, then and in that event having a reasonable doubt as to whether the alleged agreement between the parties related to compensation for such activities at the

Department of Justice to corruptly influence its officials, you are instructed that the Defendants must be acquitted. (R. 468-R. 470)

DEFENDANT EDLIN'S INSTRUCTION NO. 19a

(Alternative)

You are instructed that with reference to that aspect of the First Count—the so-called conspiracy County—pertaining to the visits to the Department of Justice, it is undisputed by the Defendants that certain visits and contacts were made by Congressman Johnson and Congressman Boykin to the Department of Justice officials.

You are further instructed that the mere fact that there may have been an agreement between the parties with reference to such visits, is not in and of itself improper, and is not in and of itself sufficient to sustain a conviction.

Under the law which this Court has determined applicable to this case, you are instructed as follows:

1. If you have a reasonable doubt as to whether or not there was an agreement to which the Defendant Edlin was a party that the Defendant, Thomas Johnson, should or would conceal his interests from the Department of Justice or should or would fail to put the Department of Justice officials upon notice that he was acting in the capacity of an attorney at the time of the visits with the officials of the Department of Justice, or if you have a reasonable doubt as to whether or not the Department of Justice officials were to be put on notice that Congressman Johnson was acting in the capacity of a compensated attorney, then you are instructed that as to that aspect of the case there is no offense under the charges of this indictment.

2. Further, even if you find that there was an agreement that the Defendant Thomas Johnson would or should not disclose or give notice of the fact that he was acting as an attorney to the officials of the Department of Justice, if you so find the facts, then you are further instructed that no offense has been committed if there was an agreement also

that such payments as Congressman Johnson may have agreed to receive or did receive, or such compensation as Congressman Johnson agreed to receive or did receive, related to legal services performed by him and did not relate to such visits. Therefore, you are instructed that as to the first charge of this indictment which is a charge of conspiracy or an agreement, if you find that the evidence of an agreement as to compensation in this case related to legal services performed by Congressman Johnson and do not relate to payment or compensation for visits to the Department of Justice or if you have a reasonable doubt as to such fact, then you are further instructed that no offense has been committed.

As to this defendant, you are further instructed that unless you find beyond a reasonable doubt, he knowingly and willfully and with a wrongful criminal intent, based upon actual notice, conspired with and entered into such agreement with Congressman Johnson actually knowing in what manner he was to or would act, then as to this defendant who did not so agree, you are instructed that as to this aspect no offense has been committed under the First Count.

As to that aspect of the case which relates to the land transactions of Virginia and Maryland tracts, you are specifically instructed that it is proper and is not violative of the law for a Congressman, whether acting individually or as a representative of a force in a corporation to buy, sell, or in any way deal with real estate. You are not to consider that there is anything improper in and of itself if a Congressman so acts nor is it improper for any person or firm to deal with a Congressman in such regard. Accordingly, you are instructed that under the principles which this Court has determined as applicable to this case the law is as follows:

1. If you have a reasonable doubt as to whether or not the alleged agreement relating to land transaction by and between the corporations involved herein acting through the persons who were either their agents or interested

parties was a bona fide or good faith transaction or pursuant to as knowingly a criminal agreement, then you are instructed that as to that aspect of the case there has been no offense charged or shown. There could only be an offense under this indictment if the agreement with respect to the land transactions was entered into as a knowing, intentional means of payment to the Congressman for making contacts and holding meetings with officials of the Department of Justice with the intent to corruptly influence their decisions. In other words, if you have a reasonable doubt as to whether or not there was an unlawful agreement in that the land transactions and fee agreement were designed to be compensation and consideration for improper and illegal activities of Congressman Boykin and/or Congressman Johnson or both, as distinguished from a land transaction and attorneys fee agreement between two contracting parties, then and in that event having a reasonable doubt as to whether the alleged agreement between the parties related to compensation for such alleged illegal activities at the Department of Justice to corruptly influence its officials, you are instructed that the Defendants must be acquitted. (R. 471-473)

DEFENDANT EDLIN'S INSTRUCTION NO. 20

You are instructed that as to the remaining counts—Counts two through eight, are the so-called substantive counts.

These are not counts charging a conspiracy. They are charges that there was a violation of Title 18, Section 281 of the U. S. Code which has sometimes been referred to as the Conflict-of-Interests Statute. In these counts, Congressman Johnson is charged as the principal and the remaining defendants are charged as alleged aiders and abettors, that is as persons who are alleged to have aided the Congressman in the claimed violations.

The essential elements of these offenses consist of alleged improper conduct by Congressman Johnson, which is claimed to have been aided and abetted by the remaining defendants. You have been instructed in this regard, that

under the law, if you have a reasonable doubt as to any one of the essential elements of the offenses, then as to that count you must find the defendant not guilty. Furthermore as to these particular substantive counts, Count two through eight, if you find under the law as determined by this Court that Congressman Johnson is not guilty on these counts, or any of them, then as to such count or counts in which you find Congressman Johnson not guilty, you must also find the remaining defendants not guilty. (It is, of course, also possible as I shall explain further and for additional reasons, for you further to find the remaining defendants not guilty even apart from finding of guilt as to Congressman Johnson.)

The essential elements which this Court has determined as the law applicable to this case are:

1. That Congressman Johnson, willfully, knowingly and with a wrongful criminal intent sought to influence the decision of the Department of Justice officials in reference to a pending indictment against the defendant Kenneth Edlin and others, and was paid compensation in the specific amount stated in each count for the specific alleged services rendered on the date stated in the particular count, and that such offenses occurred in the State of Maryland. Therefore if you have a reasonable doubt as to whether Congressman Johnson knowingly and with a willful and criminal intent did perform services in an attempt and with the wrongful intent to influence improperly the decisions of the Department of Justice officials with reference to a pending criminal case involving the defendant, Mr. Edlin and others, or if you have a reasonable doubt as to whether Congressman Johnson was so paid for such services at such time, or if you have a reasonable doubt as to whether there was a knowing criminal intent on Congressman Johnson's part as to such alleged services, or if you have a reasonable doubt that the claimed payment received by him was for legal services unrelated to the activities of Congressman Johnson before the Department of Justice or its officials, or if you have a reasonable doubt that the alleged offense occurred in the State of Maryland, then having a reasonable doubt about

any one of these essential elements, you must acquit and find the defendant Congressman Johnson not guilty as charged in the Count II, under law which this Court has determined as applicable to such Count. You need not have a reasonable doubt about all of these factors, but only one in order to acquit.

Count two has charged that the Congressman was paid for such alleged services the sum of $800.00 on or about April 3, 1961. If under the foregoing instructions you have a reasonable doubt as to whether such payment was for services allegedly rendered before the Department of Justice on that date or a reasonable doubt as to the criminal intent of Congressman Johnson, or as to whether such payment was for legal services unconnected or unrelated to alleged activities at the Department of Justice, or a reasonable doubt as to whether the alleged offenses occurred in the State of Maryland then as indicated, if you have such reasonable doubt as to any one of the essential elements of the offense, you must find the defendant Congressman Johnson, and consequently the remaining defendants, not guilty as charged in Count two.

As to Count three through eight, the same elements are required except that the dates and amounts of the sums alleged to have been paid are different. As to these counts once again if you have a reasonable doubt that the particular sum alleged to have been paid in Count three, in fact was paid for the alleged services in an attempt and with the wrongful intent to influence improperly the Department of Justice officials as to a pending criminal case, or if you have a reasonable doubt as to whether the actions of Congressman Johnson were willful, knowing criminal intent or if you have a reasonable doubt as to whether such payments as are claimed to have been made were instead made for legal services unconnected with activities of Congressman Johnson in relation to the Department of Justice, or if you have a reasonable doubt as to whether the alleged offenses occurred in the State of Maryland, then, should you have a reasonable doubt about any one of these essential elements, you are instructed that having such a reasonable doubt,

you must find the defendant Congressman Johnson, and consequently the remaining defendants, not guilty as charged, as to all or any of these remaining counts on which you have such doubt.

You are further instructed that even if you may have no reasonable doubt with respect to Congressman Johnson, and should you find him guilty as to all or any of these counts two through eight you may still find the (remaining) defendants not guilty if you further find as follows:

1. That as applied to this particular defendant there is a reasonable doubt, that such defendant had himself a criminal intent or that he allegedly aided and abetted the Congressman with a knowing, willful and criminal intent as I have defined it, or

2. That as to such defendant, you have a reasonable doubt that he had actual notice or knowledge of the manner or status or representations Congressman Johnson made or asserted to the Department of Justice officials; and if you find such defendant did not have such actual knowledge and if such remaining defendant acted in good faith without actual knowledge of the representations of Congressman Johnson, then and in that event, having such a reasonable doubt as to such defendant, you must find that defendant not guilty as charged. (R. 474-477)

DEFENDANT EDLIN'S INSTRUCTION NO. 21

You are instructed that as to Count One, the law requires that before a defendant can be convicted under this offense he must have a criminal intent. By a criminal intent is meant under this Statute a willful and knowing intent of a specific nature to violate this particular law. If you have a reasonable doubt as to whether the defendant had a specific intent of a knowing conscious nature to violate the particular law applying to this case, then and in that event having such a reasonable doubt on the issue of criminal intent, you must find the defendant not guilty as charged.

The same requirement of specific intent is applicable to

counts two through eight, the so-called substantive counts involving the Conflict of Interests statute. If you have a reasonable doubt as to whether this defendant had a specific intent to violate the particular law applying to this case, knowing and willfully, then and in that event, having such a reasonable doubt about his intent within the definition of such intent that I have given you, you must find the defendant not guilty as charged. (R. 478)

DEFENDANT EDLIN'S INSTRUCTION NO. 21a

(Alternative)

You are instructed that even assuming that you should find that an alleged unlawful agreement was entered into as to Count I in the form charged in this count and for the purposes charged in this count, if you find that the defendant Kenneth Edlin (or any of the other defendants) did not have knowledge or notice that the actions charged against them were in violation of the law, then and in that event, if you should have a reasonable doubt as to such fact, you must find the defendant Kenneth Edlin (or such other defendants as did not have notice or knowledge) not guilty as charged.

The same instruction is given you with respect to counts two through eight. If you find from the evidence that you have a reasonable doubt as to whether or not that the defendant Kenneth Edlin had knowledge or notice that the alleged acts charged against him as an aider and abettor were in violation of the law then and in that event having such reasonable doubt you must find the defendant not guilty as charged. (R. 479)

DEFENDANT EDLIN'S INSTRUCTION NO. 21b

(Alternative)

You are instructed that unless you find that the defendant knew that the particular objects of the alleged agreement in this case as charged violated the law you must find the defendant not guilty as charged. (R. 480)

DEFENDANT EDLIN'S INSTRUCTION NO. 23

Under the law as determined by this Court you are instructed (1) The mere fact that a synopsis and/or memoranda of legal and factual arguments in reference to the pending case was submitted to the Department of Justice is not to be considered as supporting any essential element of the alleged charges against the defendant, (2) If the defendant (Edlin) intended that the Congressman should seek only a decision on the merits and if you find he had reason to believe that this is all the Congressman would seek to do, then no offense has been shown. (R. 481)

DEFENDANT EDLIN'S INSTRUCTION NO. 24

You are instructed that there is evidence in this case from which the jury may infer that as to the defendant Kenneth Edlin his actions in this case were based upon consultation and advice with attorneys.

You are further instructed that in this particular case, which requires a specific intent the advice of attorneys may be a good defense, and that if you believe that Mr. Edlin did in fact rely upon the advice of counsel in this matter, then and in that event you should find him not guilty, as charged. (R. 482)

DEFENDANT EDLIN'S INSTRUCTION NO. 24a

(Alternative)

You are instructed that there is evidence in this case that the defendant Mr. Edlin, insofar as his actions relate to the general issue of criminal intent, was advised by and consulted with attorneys as to such actions. If you find this to be the fact and if you find that his actions were in reliance upon such advice, then you are instructed that there is no showing of the required specific intent as to this defendant. If you have a reasonable doubt as to this matter, you should find the defendant Kenneth Edlin not guilty as charged, as to all counts. (R. 483)

DEFENDANT EDLIN'S INSTRUCTION NO. 24b

(Alternative)

You are instructed that there is evidence in this case from which the jury may infer that as to the defendant Kenneth Edlin his actions in this case were based upon consultation and advice with attorneys. If you find that this be the fact, you are further instructed that advice of an attorney is evidence of good faith and may be considered by you as bearing upon the question of whether or not there has been a conscious knowing criminal intent sufficient to sustain a conviction. (R. 484)

DEFENDANT EDLIN'S INSTRUCTION NO. 27

You are instructed that under the law as determined by this Court, to be unlawful, the alleged agreement which is charged in Count One must have as one of its terms the knowing intent of the defendant to use corrupt influence. If you have a reasonable doubt that it was the intent of the defendant that corrupt influence should be used upon Department of Justice officials, then no offense can be found.

Similarly, under the remaining seven counts. If as to these counts you have a reasonable doubt that the defendant intended a corrupt influence to be exercised, then you must acquit.

In this case, by a corrupt influence is meant a special influence not related to the usual office of a Congressman. Further, if you find that the defendant did not intend that the Congressman should use their position or status as Congressman to sway the Department of Justice officials involved but rather intended only a decision or action on the merits then there is no offense as to such defendant. (R. 487)

DEFENDANT EDLIN'S INSTRUCTION NO. 28

You are also instructed that under the law which this Court has determined as applicable to this case services which are rendered or agreed to be rendered are not those

respecting matters made only as an incident to other business in which a defendant Congressman might lawfully engage, but only services to be rendered by such defendant with the intent and purpose of corruptly influencing and bringing to bear such corrupt influence as such defendant may have on official action. In this regard it is established that any Congressman may submit to the Department of Justice or any of its officials a brief or other memoranda or other document to support his contention that the charges against a defendant are unfounded.

Under the applicable law only if the defendant made payment or an agreement for payment with the intent I have stated and with the intent to pay for such services would such conduct be subject to the charges asserted in this case, provided further, of course, that all the other elements I have mentioned or will mention are also found beyond a reasonable doubt. (R. 488)

DEFENDANT EDLIN'S INSTRUCTION NO. 29

Under the law this Court has determined as applicable to this case you are further instructed that from the mere fact that a speech was given or delivered in the House of Representatives by Congressman Johnson on June 30, 1960, and that reprints were ordered, you are not to infer that anything improper was done. Under the law which the Court has determined as applying to this case, Congressman Johnson had an absolute right to deliver the speech for any reason whatsoever connected with his functions as a Congressman and if reprints were ordered by any of the defendants they had an absolute right to do so. Only if you find beyond a reasonable doubt that Congressman Johnson delivered the speech involved in this case pursuant to a knowing, conscious agreement made with a criminal intent, solely for the purpose of receiving payment of monies or promises of payment of monies, would an offense be established. Only if the speech was made for the sole purpose of the payment of monies to Congressman Johnson for the delivery of such speech could an offense be found under Count One. (R. 489)

DEFENDANT EDLIN'S INSTRUCTION NOS. 32 & 33

You are instructed that as to Count One of the indictment and Counts 2 through 8 the evidence does not sustain the charges against the defendant Edlin and you should therefore return a verdict of Not Guilty as to such defendant. (R. 493-R. 494)

MOTION FOR NEW TRIAL AND/OR MOTION IN ARREST OF JUDGMENT AND/OR MOTION FOR JUDGMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICT

Comes now the Defendant, J. Kenneth Edlin, by and through counsel and moves this Court to grant a new trial and/of to arrest judgment and/or to grant a judgment of acquittal n.o.v., (1) for reasons which appear in the previous motions which have been made both orally and in writing, (2) for reasons which appear in the objections to the charge and (3) for such other and further reasons which appear in the Points and Authorities attached hereto and made a part hereof and which shall be further urged at the hearing of this motion.

s/Edward L. Genn

Attorney for Defendant Edlin

POINTS AND AUTHORITIES

1. The indictment does not state an offense. As indicated in the previous motions and in particular the motion to dismiss the indictment and for reasons stated therein it is submitted that no offense has been charged under either Count I or Counts II through VIII of the indictment. Among such reasons are these:

The indictment and charge fail to state an offense.

Neither the alleged postponement of the then pending indictment or the alleged dismissal of the indictment could be functions of the Department of Justice or its officials.

Both Count I and the proof purportedly submitted by the Government in this case have resulted in a duplicitous charge; there are in effect a number of alleged conspiracies charged, rather than one offense. The charge of the Court in reference thereto is incorrect.

There is a fatal variance between the charge of the indictment and the evidence purportedly submitted by the Government. The variance is prejudicial.

Count I of the indictment is so vague and was permitted by the Court to be used so broadly as to deprive the Defendant Edlin of a fair trial violating the spirit in a concurring opinion of Justice Jackson in Krulewitch v. U. S., 336 U.S. 440.

No violation has been shown of § 371 for failure to show any interference of obstruction of alleged lawful governmental functions.

2. The indictment is in conflict with constitutional provisions as indicated in the previous motion and argument before this Court. Count I of the indictment and the charge to the jury is in conflict with Article I, § 6, Clause I of the United States Constitution.

3. Neither Count I of the indictment, nor the related evidence and charge to the jury state an offense involving a defrauding of the United States. For reasons which have been previously stated in oral and written motions, it is submitted that there has been no showing of a defrauding of the United States within the adjudicated cases defining the meaning of this offense as charged in Count I.

4. The Court's failure to grant Defendant Edlin's instructions in reference to Counts I through VIII is error. Both by virtue of the instructions submitted to the Court by this Defendant and in the exceptions to the charge of the Court to jury this Defendant indicated his disagreement with the Court's theory of the case in reference to all counts of the indictment. For example, the Defendant Edlin's instruction 18(b) sought to make clear to the jury that it is proper for persons to have a point of view ex-

pressed, and that a speech which is made merely to state a point of view does not constitute an offense within the meaning of the indictment. The failure of the Court to charge in this regard is error. Similarly, Defendant Edlin's instruction 18(c) also sought to make clear to the jury that it could not consider campaign contributions as compensation in this case if such monies were paid to Congressman Johnson simply as campaign contributions and nothing more. The jury should have been so instructed. Among other things, instructions 19(a) and 20(a) sought to make clear to the jury both the quantum of proof on each element of the alleged offense and the elements themselves necessary to sustain a conviction. The Court erroneously instructed the jury that even if Congressman Johnson was acting as an attorney there would be an offense if he used congressional influence. It is submitted that this instruction is in error.

The failure to grant the substance of Defendant Edlin's instruction No. 23, particularly the second portion of it relating to what was intended by this Defendant was error. The failure to grant the substance of Defendant Edlin's instructions 24(a) or 24(b) based upon the defense of consultation and advice with attorneys is error. Defendant Edlin's instruction No. 27 related to the form of corrupt influence which it has submitted should have been stated to the jury. In the light of the Court's specific charge and theory of the case it was essential that the jury be instructed that a form of corrupt influence as indicated in Defendant Edlin's instruction No. 27 had to be found in reference to the specific counts referred to in order for a conviction. Similarly, the Court erred in denying Defendant Edlin's instruction No. 28. Failure to grant Defendant Edlin's instruction No. 29 in whole or in substance was error.

Denial of the remaining instructions submitted by this Defendant was error.

5. The Court erred in failing to grant Defendant Edlin a mistrial on the ground of prejudice occurring in the case. This Defendant at various stages in the proceeding moved the Court for a mistrial. No useful purpose could be served

in repeating once again the numerous grounds which support this motion.

In summary it is clear that a number of prejudicial matters were brought into evidence in this case to a degree which prevented this Defendant from obtaining a fair trial. Among them were the matters related to the 1941 conviction, the testimony relating to events surrounding the Koruna Savings & Loan Company, the testimony of Mr. Meyer (with its constant repetition), references to the pending Montgomery County indictments, characterizations of an adverse nature made by witnesses both for the Government and for the other defendants, and such other prejudicial matters, including exhibits, as have been mentioned both in the motions and objections at trial, both specifically and in subject matter.

At no time has this Court ever responded to, not has the Government responded to the contention as to the impact and purpose of the Attorney-General volunteered remarks, characterizing of this Defendant's testimony before the Grand Jury, nor has this Court indicated, nor has the Government indicated the justification for Government's Exhibits 185 a-k (the "post-conspiracy" Edlin-Goldman-Robinson checks); nor has there been justification shown for the remarks of the Assistant Attorney-General, Mr. Miller (including discussions of past convictions, the savings and loan "situations," even the use of the depositors money to pay a supposed fine); nor has there been justification for the characterizations by the other Government witnesses and the defendants witnesses as to this Defendant.

At page 57 of this transcript at the outset of this trial the court made mention of the Michaelson case and of the importance of abiding not only to the words, but to the "spirit" of the Michaelson case. Over a period of twelve weeks of constant emphasis and re-emphasis of the past history of this Defendant it is submitted that if there is a spirit in Michaelson it dissipated itself in the first day of trial and was never revived again. This Court stated at pages 57-58 of the transcript that even if prejudicial matters

had some relevancy, if that relevancy were remote the Court would not permit such testimony. With reference to the discussions of the Koruna transaction and their emphasis and re-emphasis, the question can be put as to what was the actual materiality or relevancy to this case of these discussions. The Government did not even seek to argue or mention it. Of what real significance was the discussion of Meyer's information? Yet pages of testimony by Mr. Meyer or of discussions about what Mr. Meyer said, or of what each of the parties said about what Mr. Meyer said, were presented to the jury. Even assuming for the sake of discussion that the fact of the Meyer visit may have some materiality, what is the significance of the discussions themselves, what is the materiality of the information given? It is submitted that the prejudicial matters stated so far outweigh any remote materiality that they may have that the "spirit of Michaelson" as the Court stated it, was in fact violated. The sole effect of this kind of matter and the other like or similar characterization was to taint the atmosphere surrounding the facts to such a degree that no fair trial could be given to this Defendant.

Venue: No proper venue was shown as to the counts of the indictment.

Argument: The Court erred in permitting the Government to comment on failure of the Defendant Edlin to stipulate to evidence and in permitting the Government to make demand in open Court for such stipulation.

The Court erred in permitting the Government in final arguments to make what constituted comment upon Defendant Edlin's failure to take the witness stand.

The Court erred in permitting the Government to make improper argument to the jury.

Other Reasons: Substantial evidence purportedly limited to consideration of the conspiracy count inevitably prejudiced and affected charges in references to this count, no clear distinction being made to the jury in this regard.

The Court did not properly limit admissibility of evidence with reference to the substantive counts.

Defendant Edlin incorporates herein the further reasons set forth in the memoranda of his co-defendants.

Summary: For these reasons and for reasons which have been urged previously both in the motions and hearings both prior to trial, during trial and conclusion of the evidence, and for reasons which were urged as exceptions to the charge, and for other and further reasons which should be urged at the hearing of this motion or by any supplementary memorandum, Defendant Edlin moves the Court for a new trial and/or judgment of acquittal n.o.v. and/or to arrest judgment herein.

s/Edward L. Genn

Attorney for Defendant Edlin

MOTIONS OF THE DEFENDANT JOHNSON FOR JUDGMENTS OF ACQUITTAL AT THE CLOSE OF ALL THE EVIDENCE UNDER CRIMINAL RULE NO. 29.

Motions of the Defendant Johnson for a Judgment of Acquittal Under the First Count (the Conspiracy Charge) of the Indictment

I

A. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment on the ground that the evidence questions in a place other than the House of Representatives the speech of Congressman Thomas F. Johnson in the House of Representatives in violation of Section 6, Clause 1, of the Constitution of the United States.

B. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment on the ground that said First Count violates the Sixth Amendment

of the Constitution of the United States, and the due process clause of the Constitution by depriving this accused of his right "to be informed of the nature and cause of the accusation . . ." by charging this Defendant with participation in a conspiracy, the purposes of which are so vague, general and indefinite that this Defendant is not apprised of the offense charged. *United States v. Mills,* 7 Pet. 142; *United States v. Lattimore,* 127 Fed. Supp. 405, 410; *Sutton v. United States,* 157 F.2d 661 (5th Cir.); *Fontana v. United States,* 262 F. 283, 286 (8th Cir.); *Asgill et al. v. United States,* 60 F.2d 780, 785 (4th Cir.).

C. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment on the ground that the Government purports to charge a conspiracy to defraud the United States when in actuality it is attempting to charge a conspiracy to commit a specific offense against the United States, namely, a conspiracy to violate 18 U.S.C. Section 281. (See Paragraphs (18) to (25) inclusive and Overt Acts (17) to (75) inclusive.)

D. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment on the ground that said First Count charges two or more offenses in violation of Rule 8(a) of the Federal Rules of Criminal Procedure, namely, the Government charges in a single count several separate conspiracies: (1) a conspiracy to defraud the United States of its governmental functions; and (2) a conspiracy to commit an offense against the United States, i.e., a violation of 18 U.S.C. Section 281.

E. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment on the ground that said First Count charges in a single count several separate conspiracies in time and membership: one conspiracy relating to an alleged agreement in June, 1960, that this Defendant as a member of the House of Representatives would not act impartially, free from influence in relation to matters pending in the House of Representatives and the other a conspiracy relating to an alleged

agreement in March, 1961, to exert influence for compensation upon officers of the Department of Justice.

F. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment on the ground that the First Count is fatally defective by reason of its duplicity.

II

A. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment upon the ground that the evidence is insufficient to sustain a conviction of the offense charged.

B. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment upon the ground that there is no sufficient evidence to show that, from on or about April 1, 1960, until on or about December 31, 1961, or during any lesser period, the Defendants conspired to defraud the United States of its governmental functions and rights described in the First Count of the Indictment.

C. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment upon the ground that there is not sufficient evidence to show that it was a part of the conspiracy that this Defendant should, at the request of Defendants Edlin and Robinson, render services for compensation by the making of a speech defending the operations of Maryland's independent savings and loan associations.

D. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment NWV upon the ground that there is not sufficient evidence to show that it was a part of the conspiracy that Edlin and Robinson and the other alleged co-conspirators would pay money or other valuable considerations to this Defendant to influence the officials of the Department of Justice to promote the interests of Edlin, Robinson and the other alleged co-conspirators.

E. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment upon the ground that the evidence is not sufficient to show that, as a part of the conspiracy, this Defendant would render services for compensation to any of the other Defendants by interceding with the officials of the Department of Justice.

F. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment upon the ground that the evidence is not sufficient to show that as a part of the conspiracy this Defendant would communicate with the Attorney General or Assistant Attorney General Miller to cause the postponement or dismissal of the mail fraud indictment for which this Defendant would receive compensation or promises of compensation.

G. Motion of the Defendant Johnson for a judgment of acquittal under the First Count of the Indictment upon the ground that the evidence is not sufficient to show that the Defendants conspired from about April 1, 1960, until about December 31, 1961, or during any lesser period, to defraud the United States of its governmental functions.

H. Defendant Johnson moves for a judgment of acquittal under the First Count of the indictment on the ground that:

1. The First Count charges an alleged conspiracy "to defraud the United States or any agency thereof" under 18 U.S.C. Sec. 371.

2. As used in the statute, the words "to defraud the United States or any agency thereof" mean to cheat the Government out of property, money or taxes or to obstruct Governmental functions by deceit, trickery, misrepresentations or false statements; and

3. There is no sufficient evidence in this case that Johnson did conspire to defraud the United States or any agency thereof within the meaning of the statute.

III

Motions of the Defendant Johnson for Judgments of Acquittal with Respect to the Substantive Counts of the Indictment

A. Defendant Johnson moves for a judgment of acquittal under each substantive count of the Indictment upon the ground that the evidence is not sufficient to sustain a conviction of the offense charged.

B. Defendant Johnson moves for a judgment of acquittal under the Second Count of the Indictment upon the ground that the evidence is not sufficient to show that this Defendant received a check dated March 31, 1961, in the sum of $800.00 for services rendered or to be rendered by him before the Department of Justice in relation to the mail fraud indictment.

C. Defendant Johnson moves for a judgment of acquittal under the Third Count of the Indictment upon the ground that the evidence is not sufficient to show that this Defendant received a check dated May 2, 1961, in the sum of $3,500.00 for services rendered or to be rendered by him before the Department of Justice in relation to the mail fraud indictment dated November 17, 1959.

D. Defendant moves for a judgment of acquittal under the Fourth Count of the Indictment upon the ground that the evidence is not sufficient to show that this Defendant received a check dated May 25, 1961, in the sum of $2,500.00 for services rendered or to be rendered by him before the Department of Justice in relation to the mail fraud indictment dated November 17, 1959.

E. Defendant Johnson moves for a judgment of acquittal under the Fifth Count of the Indictment upon the ground that the evidence is not sufficient to show that this Defendant received a check dated June 7, 1961, in the sum of $4,000.00 for services rendered or to be rendered by him before the Department of Justice in relation to the mail fraud indictment dated November 17, 1959.

F. Defendant Johnson moves for a judgment of acquittal under the Sixth Count of the Indictment upon the ground that the evidence is not sufficient to show that this Defendant received a check dated June 28, 1961, in the sum of $3,250.00 for services rendered or to be rendered by him before the Department of Justice in relation to the mail fraud indictment dated November 17, 1959.

Q. Defendant Johnson moves for a judgment of acquittal under the Seventh Count of the Indictment upon the ground that the evidence is not sufficient to show that this Defendant received a check dated August 4, 1961, in the sum of $2,000.00 for services rendered or to be rendered by him before the Department of Justice in relation to the mail fraud indictment dated November 17, 1959.

H. Defendant Johnson moves for a judgment of acquittal under the Eighth Count of the Indictment upon the ground that the evidence is not sufficient to show that this Defendant received a check dated September 12, 1961, in the sum of $1,500.00 for services rendered or to be rendered by him before the Department of Justice in relation to the mail fraud indictment dated November 17, 1959.

I. Defendant Johnson moves for a dismissal of each of the substantive counts upon the ground that the evidence is not sufficient to show venue within the State or District of Maryland.

GEORGE COCHRAN DOUB,

Attorney for Thomas F. Johnson

Of Counsel:

WEINBERG AND GREEN

MOTIONS OF DEFENDANT JOHNSON TO STRIKE TESTIMONY AND EXHIBITS

1. The Defendant Johnson moves to strike Government Exhibit No. 6 upon the ground that the Government failed to show that Mr. Johnson received any sum of money in cash from any source at any time, including the sum of $500.00 which the voucher indicates was paid by First Continental Savings and Loan Association to Edlin "to reimburse for personal outlay; legal —Johnson, $500." (Tr. Vol. 4, p. 207-208)

Government Exhibit No. 6 was admitted subject to exception by Defendant Johnson and provided the Government followed it up by showing Johnson received that sum. There is no evidence in the record supporting the Exhibit.

(Granted.)

2. Defendant Johnson moves to strike (a) the testimony of FBI Special Agent Robert Milne on June 5, 1963, as to verbal statements made to him by the defense witness Buarque in an interview with Milne on January 11, 1962, and (b) the testimony of FBI Agent Strickland as to verbal statements made to him by the Defendant Robinson in an interview on January 27, 1962, on the following grounds.

Both agents stated on cross examination that they had destroyed their written notes of the interviews made contemporaneously in the course of the interviews after the later preparation from the notes of narrative statements. Neither FBI agent testified that his notes had been lost, stolen or inadvertently destroyed; and on the other hand it may be reasonably inferred that their notes were destroyed pursuant to a considered policy of the Federal Bureau of Investigation.

18 U.S.C. Sec. 3500 requires the trial judge, upon a motion by the defendant, to "order the United States to produce any statement . . . of the witness in the possession of the United States" which is relevant to the direct testimony of the Government witness. It is our contention that the words

"in the possession of" should be interpreted as ordinarily meaning "possession of the United States at the present time". *Campbell v. United States,* 365 U.S. 85, 102 (where Government counsel stated that he did not possess the contemporaneous statements and this statement was not questioned by defense counsel). We submit, however, that the words "in the possession of the United States" comprehends the written notes of a Government agent which have been deliberately destroyed by him, whether pursuant to administrative policy or otherwise. *Campbell* did not deal with this issue.

As the Court of Appeals for the Second Circuit said in *United States v. Thomas,* 282 F.2d 191, 194, "Border-line situations should be resolved by the trial judges and not by Government agents; hence it would be the better practice to preserve the written notes taken of interviews with persons accused or suspected of crime." In the *Thomas* case the Court said, "The notes had been destroyed and with no intent to suppress evidence." There, as in this case, a typewritten interview report was prepared by the agent who testified that he checked the report against his notes for accuracy and thereafter the agent destroyed the notes.

The fact that FBI agents in *Campbell,* in *Thomas,* and in this case all followed the same procedure of destroying the written notes of their interviews after preparation of interview reports, suggests (1) the agents did not violate administrative policy by doing so but on the contrary they were following administrative policy; and (2) the purpose of that administrative policy necessarily must be to make it impossible for defense counsel to cross-examine a Government agent with respect to the accuracy of his notes made contemporaneously during the course of an interview, as in this case, and to force acceptance by the jury of an agent's testimony as to alleged statements made to him by a witness or a defendant when confirmed by an interview report or a narrative statement. Such a policy prevents any inquiry or verification of the accuracy of the interview, report or narrative statement. Such a policy may be deemed directed to the suppression of evidence.

It is submitted that such an administrative policy of the Federal Bureau of Investigation is dangerous and prejudicial to the rights of the accused in the Federal district courts. Accordingly, it is submitted that the words in 18 U.S.C. Sec. 3500 requiring the United States to produce "any statement . . . of the witness in the possession of the United States" should be deemed to include all written contemporaneous interview notes of a Government agent which have been deliberately destroyed by the agent.

It is submitted, therefore, that this Motion to strike the testimony of each FBI agent should be granted.

(Denied.)

George Cochran Doub,

Attorney for Thomas F. Johnson

Of Counsel:

Weinberg and Green

REQUESTS FOR INSTRUCTIONS TO THE JURY BY DEFENDANT JOHNSON

General

Circumstantial Evidence

B. The Court instructs the Jury that there is no direct evidence in this case that the Defendant Johnson conspired with any other defendants to defraud the United States, or that he conspired to make a speech for compensation as a part of the alleged conspiracy, or that he conspired with any of the other defendants to influence the officials of the Department of Justice under the First Count of the Indictment, or that he was compensated or promised compensation for his visits to the Department of Justice under each of the substantive counts of the Indictment. The Government's case under each Count of the Indictment is based upon circumstantial evidence.

The Court instructs the Jury that circumstantial evidence is that evidence which tends to prove a disputed fact by proof of other facts which have a legitimate tendency to lead the mind to the conclusion that the fact exists which is sought to be established. ((Bouvier's Dictionary). Circumstantial evidence is that which establishes the fact to be proved only through inference based on human experience that a certain circumstance is usually present when another certain circumstance or set of circumstances is present. Direct evidence establishes the fact to be proved without the necessity for such inference. *Radomsky v. United States,* 180 F.2d 781, 783 (1950, 9th Cir.)

The Court instructs the Jury that whenever a circumstance relied on as evidence of criminal guilt is susceptible of two inferences, one of which is favorable to innocence, such circumstance is robbed of all probative value and is insufficient to support a judgment of guilt. *Calvaresi v. United States,* 216 F. 2d, 891, 905 (1954, 10th Cir.)

SUBSTANTIVE COUNTS

Second Count

1. The Court instructs the Jury that, if they find that Johnson did not knowingly receive the check of Robinson dated March 31, 1961, in the sum of $800.00 as compensation for services rendered or to be rendered before the Department of Justice, the Jury must return a verdict as to him of NOT GUILTY.

Third Count

2. The Court instructs the Jury that, if they find that Johnson did not knowingly receive the check of First Continental Savings and Loan Association dated May 2, 1961, in the sum of $3,500.00 as compensation for services rendered or to be rendered before the Department of Justice, the Jury must return a verdict as to him of NOT GUILTY.

FOURTH COUNT

3. The Court instructs the Jury that, if they find that Johnson did not knowingly receive the check of First Continental Savings and Loan Association dated May 25, 1961, in the sum of $2,500.00 as compensation for services rendered or to be rendered before the Department of Justice, the Jury must return a verdict as to him of NOT GUILTY.

FIFTH COUNT

4. The Court instructs the Jury that, if they find that Johnson did not knowingly receive the check of First Continental Savings and Loan Association dated June 7, 1961, in the sum of $4,000.00 as compensation for services rendered or to be rendered before the Department of Justice, the Jury must return a verdict as to him of NOT GUILTY.

SIXTH COUNT

5. The Court instructs the Jury that, if they find that Johnson did not knowingly receive the check of First Continental Savings and Loan Association dated June 28, 1961, in the sum of $3,250.00 as compensation for services rendered or to be rendered before the Department of Justice, the Jury must return a verdict as to him of NOT GUILTY.

SEVENTH COUNT

6. The Court instructs the Jury that, if they find that Johnson did not knowingly receive the check of Robinson dated August 4, 1961, in the sum of $2,000.00 as compensation for services rendered or to be rendered before the Department of Justice, the Jury must return a verdict as to him of NOT GUILTY.

EIGHTH COUNT

7. The Court instructs the Jury that, if they find that Johnson did not knowingly receive the check of Robinson dated September 12, 1961, in the sum of $1,500.00 as com-

pensation for services rendered or to be rendered before the Department of Justice, the Jury must return a verdict as to him of NOT GUILTY.

8. The Court instructs the Jury that a person who is an attorney as well as a member of Congress may practice law and may represent an accused with respect to a pending criminal case for compensation. If the Jury finds that Johnson did knowingly receive any check in evidence in this case as compensation for his visits to the Department of Justice, they must return a verdict of NOT GUILTY if they further find that Johnson was representing First Colony Savings and Loan Association, a Defendant in the mail fraud case and he told the Justice officials that he was attorney for First Colony Savings and Loan Association.

9. The Court instructs the Jury that, if they find the checks in evidence were received by Johnson as compensation for bona fide legal services rendered by him to the savings and loan associations and later to the land companies, as testified to by Johnson and Robinson, then they should return a verdict of NOT GUILTY on each substantive count.

11. In determining (1) whether Johnson's legal services to the savings and loan associations and later the land companies were a sham and pretense and (2) whether Johnson knowingly received compensation for his visits to the Department of Justice, the Jury is instructed that the burden of proof is upon the Government to establish these facts to the Jury's satisfaction beyond a reasonable doubt and, if the Government has failed to establish those facts by a preponderance of the evidence or has left the minds of the Jury in doubt or uncertainty, then Johnson is entitled to a verdict of NOT GUILTY.

12. The Court instructs the Jury that, if they find that Johnson sincerely believed at the time the check specified in a substantive count was received by him as compensation for bona fide legal services rendered by him to the savings and loan associations or to the land companies and that

such check was not received by him as compensation for his visits to the Department of Justice, the Jury must find Johnson NOT GUILTY as to said substantive count.

13. The Court instructs the Jury that, if they find that Johnson sincerely believed at the time the check specified in a substantive count was received by him as compensation for bona fide legal services rendered by him to the savings and loan associations or to the land companies and that such check was not received by him as compensation for his visits to the Department of Justice, the Jury must find Johnson NOT GUILTY as to said substantive count even though the Jury believes that said payment was a large one for the legal services rendered.

14. The Court instructs the Jury that Attorney General Kennedy, Assistant Attorney General Miller and Defendants Johnson and Boykin all testified that at the meetings in the Department of Justice Johnson and Boykin said on several occasions that they sought a review of the mail fraud case on its merits and they did not wish to interfere in any way with the case and they were not asking any favors. It is also undisputed that matters were discussed at such meetings other than the mail fraud case. The Court instructs the Jury that, even though Boykin and Johnson may have hoped such a review on the merits by the Justice officials might result in the dismissal of the case, there is no evidence that these Defendants requested a dismissal of the case. If the Jury concludes that Johnson in his meetings at the Department of Justice only sought such a review of the mail fraud case on its merits, their verdict as to Johnson on each substantive count should be NOT GUILTY.

GEOPGE COCHRAN DOUB,

Attorney for Thomas F. Johnson

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15. The Court instructs the Jury that "services rendered" in relation to any proceeding in which the United

States is a party or is interested before any Government department or agency, as contained in 18 U.S.C. Sec. 281, means that a defendant, to violate the statute, must have been employed, or must have agreed to render such services at the time of or before he rendered the services, and if you find that this Defendant had not been employed or had not agreed to render such services, you should return a verdict of NOT GUILTY on each of the substantive counts.

REQUESTS FOR INSTRUCTIONS
THOMAS F. JOHNSON

As to any portions of the charge, the Court has stated it has given at the request of any defendant, this Defendant requests that the Court instruct the jury that such portions are as much a part of the charge of the Court as if they had originated with the Court and are just as binding on the jury.

Finnegan v. United States, 204 F.2d 105, 115 (8th Cir.)

The Court instructs the jury that the charge of a criminal offense contained in each count of the indictment rests upon circumstantial evidence and accordingly the rule with respect to circumstantial evidence requires that the circumstances be not only consistent with the guilt of the Defendant Johnson but shall be inconsistent with any other reasonable theory than that of guilt; and if you find that the circumstances are as consistent with his innocence as with his guilt, you should return a verdict of Not Guilty.

Underhill's *Criminal Evidence*, Sec. 19.

The Court instructs the jury that the prosecution must establish beyond a reasonable doubt certain essential elements under any of the substantive counts. And if the prosecution fails to do so, you must return a verdict of Not Guilty.

Those essential elements are:

(1) That the Defendant Johnson received, directly or indirectly, all or a substantial part of the proceeds of the check described in each count, as compensation for services rendered by him in connection with his meetings with the Attorney General or the Assistant Attorney General in charge of the Criminal Division.

(2) The Defendant Johnson knowingly, deliberately and intentionally received such compensation for services before the Department of Justice which he knew had been thus rendered during the period he was a member of Congress.

(3) That such compensation was received in return for services rendered for the purpose of interceding with, and with the intent to influence and persuade, officers of the Department of Justice, to obtain the dismissal of the pending mail fraud indictment against Mr. Edlin and First Colony.

United States v. Quinn, 141 F. Supp. 622 (D.C. N.Y. 1956).

The Court instructs the jury that "services rendered" in relation to any proceeding in which the United States is a party or is interested before any Government department or agency, as contained in 18 U.S.C. Sec. 281, means that a defendant, to violate the statute, must have been employed, or must have agreed to render such services at the time of or before he rendered the alleged services, and if you find that this Defendant had not been employed or had not agreed to render such services, you should return a verdict of Not Guilty on each of the substantive counts.

The Court instructs the jury that "compensation" as used in the statute means the payment of the proceeds of the check described in each substantive count, or a substantial part thereof; and, if you find that the Defendant Johnson did not receive the proceeds of that check or any substantial part thereof as compensation for his visits with

officials of the Department of Justice, you must return a verdict of Not Guilty.

MOTION OF THOMAS F. JOHNSON FOR A JUDGMENT OF ACQUITTAL, NOTWITHSTANDING THE VERDICTS AND, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL.

The Defendant, Thomas F. Johnson, by his attorneys, moves this Honorable Court for a judgment of acquittal, notwithstanding the verdicts of the jury, and, in the alternative, that this Honorable Court, in the interest of justice, grant to such Defendant a new trial for the following reasons:

A. The Court erred in denying Defendant's motion for acquittal made at the conclusion of the evidence.

B. The verdicts are contrary to the weight of the evidence.

C. The verdicts are not supported by substantial evidence.

D. The Court erred in denying all previous motions made on behalf of the Defendant, and the Defendant adopts, by reference in this motion, all past motions made by him in this case.

1. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, on the ground that the Count questions in a place other than the House of Representatives the speech of Congressman Thomas F. Johnson in the House of Representatives in violation of Section 6, Clause 1, of the Constitution of the United States. The Court should have granted the pre-trial motion of this Defendant to dismiss the First Count upon this constitutional ground. Under the Constitution this Court had no jurisdiction over the allegations of the First Count of the Indictment with respect to the speech of Congressman

Johnson. The constitutional prohibition was absolute and unqualified in its terms and made no distinction between a speech made for a good purpose or a bad purpose or an improper purpose.

2. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, on the ground that said First Count violated the Sixth Amendment of the Constitution of the United States, and the due process clause of the Constitution by depriving this accused of his right "to be informed of the nature and cause of the accusation . . . " by charging this Defendant with participation in a conspiracy, the purposes of which were so vague, indefinite and unintelligible that this Defendant was not apprised of the offense charged. The Indictment charged this Defendant with participation in a conspiracy to defraud the United States of the faithful services of its administrative officers and the faithful services of Congressman Johnson and Congressman Boykin. The alleged purposes of the conspiracy are so imprecise as to afford no standards for the admissibility of evidence or the determination of the sufficiency of evidence. They fail to meet any sensible standards of clarity or definiteness. The Court should have granted the pre-trial motion of this Defendant to dismiss the First Count upon this constitutional ground. The validity of the conspiracy charge, under established principles of construction, should have been evaluated by the Court in terms of these purposes as stated in Paragraph (14) of the First Count, and not under the allegations of Paragraphs (15) to (25) which purported to embody the means whereby the Defendants carried out the conspiracy.

3. Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, on the ground that the Government charged a conspiracy to defraud the United States of the faithful services of its officers rather than a conspiracy to commit a specific offense against the United States, namely, a conspiracy to violate 18 U.S.C. Sec. 281, for the purpose of

enabling the Government to impeach the speech of Congressman Johnson in the House of Representatives on June 30, 1960 and to create a non-existent offense as to the visits to Justice in 1961. As a consequence the Government was enabled to utilize the First Count to submit evidence and contend and argue that Johnson conspired to make a speech for compensation on June 30, 1960, and that the Defendants in connection with the visits of Boykin and Johnson to the Department of Justice in 1961 conspired to influence Justice officials even though no compensation to them was involved.

4. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, on the ground that said First Count charged two or more offenses in violation of Rule 8(a) of the Federal Rules of Criminal Procedure, namely, the Government in fact charged in a single count several separate conspiracies: (1) a conspiracy to defraud the United States of the faithful services of Congressman Johnson by the making of a speech in the House of Representatives on June 30, 1960 and (2) a conspiracy to defraud the United States of the faithful services of the Attorney General and the Assistant Attorney General in charge of the Criminal Division by the visits of Johnson and Boykin to the Department of Justice from March 1961 to October 1961.

5. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, on the ground that said First Count charges in a single count several separate conspiracies in time and membership: one conspiracy relating to an alleged agreement in June, 1960, that this Defendant as a member of the House of Representatives would not act impartially, free from influence in relation to matters pending in the House of Representatives and the other a conspiracy relating to an alleged agreement in March, 1961, to exert influence for compensation upon officers of the Department of Justice.

6. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, on the ground that the First Count was fatally defective by reason of its duplicity.

7. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, upon the ground that the evidence was not sufficient to sustain a conviction of the offense charged.

8. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, upon the ground that there is no sufficient evidence to show that, from on or about April 1, 1960, until on or about December 31, 1961, or during any lesser period, the Defendants conspired to defraud the United States of its governmental functions and rights described in the First Count of the Indictment.

9. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, upon the ground that there is not sufficient evidence to show that it was a part of the conspiracy that this Defendant should, at the request of Defendants Edlin and Robinson, make for compensation a speech in the House of Representatives defending the operations of Maryland's independent savings and loan associations.

10. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, upon the ground that there is not sufficient evidence to show that it was a part of the conspiracy that Edlin and Robinson and the savings and loan associations would pay money or other valuable considerations of this Defendant to influence the officials of the Department of Justice to promote the interests of Edlin, Robinson, etc.

11. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, not-

withstanding the verdict, upon the ground that the evidence is not sufficient to show that, as a part of the conspiracy, this Defendant attempted to defraud the United States of the faithful services of the officials of the Department of Justice. The Attorney General and the Assistant Attorney General in charge of the Criminal Division both testified that the Defendants Johnson and Boykin asked for a review of the mail fraud case upon its merits and repeatedly stated that they did not wish to ask any favors or to interfere in the case. The undisputed evidence indicated that, although these Defendants hoped that a review upon the merits of the case would result in the dismissal of the mail fraud indictment against Edlin and First Colony, they made no improper proposals to these high-ranking Department of Justice officials.

12. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, upon the ground that the evidence is not sufficient to show that the Defendants conspired from about April 1, 1960, until about December 31, 1961, or during any lesser period, to defraud the United States of the faithful services of its officers.

13. The Defendant Johnson moves for a judgment of acquittal under the First Count of the Indictment, notwithstanding the verdict, on the ground that the First Count charges an alleged conspiracy "to defraud the United States or any agency thereof" under 18 U.S.C. Section 371. As used in the statute, the words "to defraud the United States or any agency thereof" mean to cheat the Government out of property, money or taxes or to obstruct Governmental functions by deceit, trickery, misrepresentations or false statements. There was no sufficient evidence in this case that Johnson did conspire to defraud the United States or any agency thereof within the meaning of the statute. The motion of Johnson for a directed verdict upon this ground should have been granted.

14. The Defendant Johnson moves for a judgment of acquittal on each of the substantive counts, notwithstanding

the verdict, upon the ground that the *allegations* of each substantive count failed to show venue of the offense in the District of Maryland. The pre-trial motions of the Defendants attacking venue should have been granted.

15. The Defendant Johnson moves for a judgment of acquittal on each of the substantive counts, notwithstanding the verdict, upon the ground that the *evidence* was not sufficient to show venue of the offense in the District of Maryland. The motions for directed verdicts upon this ground at the conclusion of the evidence should have been granted.

16. The Defendant Johnson moves for a judgment of acquittal on each of the substantive counts, notwithstanding the verdict, upon the ground that the evidence was not sufficient to show that the check specified therein, or the proceeds thereof, was received by Johnson as compensation for services rendered before the Department of Justice. There was no testimony in this case that such check was received for such a purpose and the uncontradicted testimony was to the contrary. The motions of the Defendants for directed verdicts upon this ground at the conclusion of the evidence should have been granted.

17. Government counsel permitted certain Government witnesses to read the transcript of their testimony before the Federal grand jury in preparation for their testimony at the trial. This breach of the secrecy of the grand jury proceedings was not sanctioned by Rule 6 of the Federal Rules of Criminal Procedure. This dangerous and unwarranted practice required the Court to exclude or strike all testimony of such Government witnesses.

18. The Court was in error in denying the motion of this Defendant to preclude the Government from using upon his cross examination the testimony of Johnson before the Federal grand jury. This case had been before the grand jury from December 1961 until October 16, 1962, when the indictments were returned. Johnson testified before the Federal grand jury on September 21, 1962 and

Boykin on October 11, 1962, shortly before the indictments were returned.

The Assistant Attorney General in charge of the Criminal Division visited Johnson on January 3, 1962, and told him that the Department had commenced an investigation but he was hopeful and expected that the investigation would come to nothing.

After Justice officials had prepared drafts of indictments, bearing the names of the Defendants, and the United States Attorney had recommended to Justice an indictment of Johnson, the Deputy Attorney General of the United States made visits on August 27, 1962, September 13, 1962, September 14, 1962 and September 21, 1962, to Johnson to solicit his testimony before the grand jury and to induce and influence him to testify before the grand jury. The Deputy Attorney General made several similar visits to induce Boykin to testify before the Federal grand jury. In a case where Justice officials were contemplating and seeking an indictment against these Defendants, Johnson had a constitutional right to determine whether he would or would not testify before the Federal grand jury, free from any influence or solicitation by high-ranking Justice officials. Furthermore, the Deputy Attorney General was obligated to inform Johnson that Justice officials had prepared drafts of an indictment bearing his name and the United States Attorney had recommended the indictment of Johnson to Justice. It was not enough for the Deputy Attorney General to say to Johnson that he might be charged. Under the unorthodox and extraordinary circumstances here, the motion made on behalf of Johnson should have been granted and no questions upon cross examination predicated upon his Federal grand jury testimony should have been permitted (Tr. 3574-3782).

19. The Court was in error in denying the motions of the Defendants to strike the testimony of FBI agents Robert F. Milne as to statements made to him by the witness Manuel Buarque on January 11, 1962, and of James

C. Strickland, Jr. as to statements made to him by the Defendant Robinson on January 27, 1962 (Tr. 5468-5513). The agents testified that they had made contemporaneously pencil notes of statements made in the course of the interviews, that later they had dictated official reports of the interviews in narrative form from these notes; and that the narrative statements contained in the reports were not verbatim statements from the notes recorded during the interviews and did not represent a reproduction of the notes (Tr. 5484). After checking the reports with their notes for accuracy, they then destroyed the notes in accordance with Bureau policy. Government counsel stated for the record that the notes were destroyed pursuant to instructions contained in the FBI manual (Tr. 5503) apparently issued after the enactment of the Jencks Act (Tr. 5504-5505).

These interviews by the FBI agents were evidently conducted as a part of the investigation which resulted in the indictment of the Defendants in October 1962 and after the grand jury in December 1961 began hearing testimony with respect to the subject matter of the indictment. It may be assumed that the special agents knew at the time they destroyed their notes of the interviews that their testimony might be later used before the grand jury and, in the event of an indictment, at the trial of this case.

When notes contemporaneously made in an FBI interview are not in the possession of the Government because they have been inadvertently lost, mislaid, misfiled or destroyed, they may not be deemed in the possession of the Government under 18 U.S.C. 3500 and need not be produced. *Campbell v. United States*, 365 U.S. 85, 102. However, when a Government agent deliberately destroys his notes pursuant to a policy of his administrative agency or instructions of that agency, an inevitable inference is that the purpose of such a policy is to prevent an accused from verifying the accuracy of narrative statements contained in the official report with the notes contemporaneously made. In *Wilson v. United States*, 162 U.S. 613, 621, the

Supreme Court said that the destruction or suppression of evidence by an accused gives rise to a presumption of guilt. Unless an alien concept of infallible statism is to be exalted, the deliberate destruction by Government agents of evidence pursuant to administrative policy must be deemed also an improper suppression of evidence so repugnant to fair play and a fair trial that 18 U.S.C. 3500 should be interpreted as making the testimony of the Government agents inadmissible. Defendants' motions to strike the testimony of such witnesses should have been granted.

20. The vilification of Johnson by Government counsel in summation to the jury was so improper and so prejudicial to Johnson as to require a new trial. In addition to intemperate abuse heaped upon Johnson, Government Counsel represented to the jury that Johnson had destroyed three important letters in March 1961 from Robinson to Johnson and had fabricated three letters dated August 25, 1960, May 22, 1961 and October 16, 1961, from Johnson to Robinson. There was no evidence to support these accusations. The Court should have granted motions by counsel for Johnson that the Court instruct the jury that there was no evidence to sustain these assertions of Goverment counsel and the jury should disregard them. There is attached hereto and made a part hereof an affidavit of Miss Breda Fermoyle, who was employed by Johnson in his congressional office from April 1961 until January 1963, whose initials appeared on the letters of May 22, 1961 and October 16, 1961.

21. It was prejudicial error for the Court to refuse to grant Johnson's requested instructions with respect to circumstantial evidence, i.e., Johnson's request B under the heading "General" (Tr. 6307).

22. It was prejudicial error for the Court to refuse to grant Johnson's requested instruction No. 11 under the heading "Substantive Counts" referring to the contention of the Government that Johnson's legal services to the

savings and loan associations and later the land companies were a sham and pretense (Tr. 6309).

23. It was prejudicial error for the Court to refuse to grant Johnson's requested instruction No. 12 under the heading "Substantive Counts" (Tr. 6310).

24. It was prejudicial error for the Court to refuse to grant Johnson's requested instruction No. 14 stating, in part, that, if the jury concluded that Johnson in his meetings at the Department of Justice only sought a review of the mail fraud case on its merits, their verdict as to Johnson on each substantive count should be "Not Guilty" (Tr. 6311).

25. There was prejudicial error in the Court's instructions to the jury that Paragraphs (15) to (25) (instead of Paragraph (14)) of the Indictment contained the purposes and objectives of the conspiracy (Tr. 6311).

26. There was prejudicial error in the failure of the Court to charge that, if the jury found there were two conspiracies and not one, then the Defendants should be acquitted (Tr. 6312).

27. There was prejudicial error in the charge of the Court to the jury defining the term "services rendered or to be rendered" as used in 18 U.S.C. Sec. 281, namely, that "services" were "broad enough to embrace any conscious and wilful effort and act to aid, assist and promote the interest of the party before a governmental department or agency" (Tr. 6291).

28. There was prejudicial error in the charge of the Court to the jury that, if the jury found from the evidence that Johnson was appearing before the Department of Justice as an attorney for Edlin or First Colony in the pending criminal case and disclosed to its officials that he was so appearing or visiting them rather than as a Congressman "with no personal or pecuniary interest in the matter", then, in that event, it would not be a violation of

Section 281 for Johnson to have requested a review of the indictment by the Department, etc. "so long as he did not attempt to bring the influence of his office as a Congressman to bear on the officials of the Department to secure a dismissal of the indictment or postponement of the case" (Tr. 6293-4). The expression quoted above "with no personal or pecuniary interest in the matter" is far broader than the terms of the statute, 18 U.S.C. Sec. 281. The final proviso of the instruction should not have been included. This proviso tended to emasculate the right of an attorney, who is a member of Congress, to act in a criminal case. Furthermore, an "attempt to bring the influence of his office as a Congressman to bear on the officials of the Department" without definition was unsound.

29. There was prejudicial error in the Court's charge to the jury that the jury must consider whether each check in evidence referred to in the substantive counts "was given in whole or in substantial part for services rendered by Johnson before the Department of Justice", and the Court's definition that "substantial part" did not mean any particular percentage of the check but a significant part as distinguished from an insignificant or inconsequential part, etc. (Tr. 6295-6; 6315). Since each substantive count of the Indictment charged that a specific check was received as compensation, etc., the Government was obligated to prove that each check in full was so given.

30. After the jury retired to consider its verdict, its foreman asked, on behalf of the jury, for a copy of the written instructions of the Court (Tr. 6330). Mr. Genn objected on behalf of Mr. Edlin (Tr. 6332). The jury were brought back and the Court told the jury that there was a difference of opinion among the lawyers as to whether it should be done or not, that although it was not customary to do it, the Court had a right to do so, but he was loath to do it "over the objection of some of the Defendants". This was prejudicial error.

31. This Defendant adopts the motions for a new trial

and for a judgment of acquittal, and the grounds stated therefor, notwithstanding the verdicts of the jury, made on behalf of the Defendants Boykin and Edlin.

GEORGE COCHRAN DOUB,

Attorney for Thomas F. Johnson

Of Counsel:

WEINBERG AND GREEN

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be delivered copies of the foregoing Motion to Joseph D. Tydings, United States Attorney for the District of Maryland, at the Post Office Building, Baltimore, Maryland, this 10th day of July, 1963.

GEORGE COCHRAN DOUB

Attorney for Thomas F. Johnson

AFFIDAVIT

I, BRENDA FERMOYLE, having been duly sworn, do hereby certify as follows:

I was employed by Congressman Thomas F. Johnson of Maryland, in his congressional office at the Capitol, from April 1961 until January 1963. During that period I acted as a receptionist and occasionally did stenographic work for the Congressman, although I was not an excellent typist.

During the trial of Mr. Johnson, I was interviewed on numerous occasions by agents of the Federal Bureau of Investigation who repeatedly questioned me concerning letters of Mr. Johnson, including thermofax copies of two letters of Mr. Johnson to Mr. William L. Robinson of Miami, Florida, one dated in May 1961 and the other later in 1961. Both letters bore my initials. I do not recall their dates but the typing of "1961" on each letter contained a

capital "I" for the number "1". In addition I was interviewed at length by Joseph Tydings, United States Attorney for the District of Maryland, and Assistant United States Attorneys Marion, Weiner, and Bennett in Baltimore, and was questioned by them with respect to such letters. I was urged to say by Mr. Tydings' associates that I had not typed these letters for Congressman Johnson, but I stated that to the best of my knowledge I had typed the letters although I did not specifically recall them.

/s/ BRENDA FERMOYLE

District of Columbia: ss:

I HEREBY CERTIFY That, on this 9th day of July, 1963, before me the subscriber, a Notary Public in and for the District of Columbia, personally appeared Brenda Fermoyle and made oath in due form of law to the foregoing statement.

MARY JO FREEHILL

Notary Public

My Commission expires April 14, 1965.

[Tr. 6000-6004]

PROCEEDINGS

(The jury was not present.)

(Mr. Doub) If Your Honor please, I wish to make three motions based upon the argument of the Assistant United States Attorney yesterday.

In the course of his argument he charged—

(The Court) What page? What page?

(Mr. Doub) I don't have the page. My notes show it very clearly, and Your Honor will recall it immediately.

He charged that Mr. Johnson had destroyed—

(The Court) Just a minute.

(Mr. Doub) I will get it.

—had destroyed three letters deliberately dated in March from Mr. Robinson addressed to him.

Now, Mr. Johnson testified that he could not find the originals of those letters but he believed that he had received them; so there was no dispute in the case, Your Honor, that Mr. Johnson had received the letters.

His charged therefore before the jury that Mr. Johnson had destroyed those letters was not supported by any evidence in the record, and my first motion is that you instruct the jury that there is no evidence that Mr. Johnson did so and they should disregard that argument.

My second motion is based upon the following charge by Mr. Marion before the jury. He stated that Mr. Johnson—

(The Court) Do you have a reference to the page?

(Mr. Doub) No, but Your Honor will recall it immediately.

(The Court) I know but I have got to have the page before there can be any action taken.

(Mr. Doub) Well, Your Honor can reserve ruling on it.

(The Court) Will you find the page for me?

(Mr. Doub) Yes.

(The Court) I want you to make your motions now, and then find the pages and let me have them.

(Mr. Doub) Yes, sir.

Mr. Marion charged before the jury that Mr. Johnson had fabricated two letters addressed to Mr. Robinson, one dated in May and one dated in October, 1961. He was referring to thermofax copies of letters which the Government had put in evidence.

He said that Mr. Johnson had obstructed justice and had attempted to defraud the Government by manufacturing those letters.

There is not one word of evidence in this record, Your Honor, that Mr. Johnson did so.

(The Court) I don't thing those were his exact words, you mean that is the effect of it.

(Mr. Doub) I think he used those words.

(Mr. Tydings) We will have something to say when Mr. Doub finishes.

(Mr. Doub) You will recall that on the cross-examination of Mr. Johnson by the Government that the Government put those thermofax copies in evidence and asked Mr. Johnson if it were not true that he had written those letters in 1962 and pre-dated them, and he said, "Absolutely not."

I did not object to that question because it was the kind of question that defense counsel could not possibly object to; but I assume that the Government could never have asked such a highly prejudicial question unless it intended to follow it up and show that they had been fabricated by the testimony of the secretary in Washington of Mr. Johnson whose initials were on the letter. They failed to follow it up.

And they failed to offer any evidence that they were fabrications. I say that that argument was so highly prejudicial that I move that Your Honor instruct the jury that there is no evidence to support that charge.

Now, my third motion, Your Honor, which I suggest that Your Honor not rule on but reserve ruling until after the verdict of the jury because we are here hoping for vindication and acquittal.

And that is the motion for mistrial on the ground that the Assistant United States Attorney yesterday made these unjustified highly prejudicial statements to the jury that I have just referred to; but in addition to that he ..... and degraded Mr. Johnson, he violated the principles defined by the Supreme Court in the Berger case where the Supreme Court that the Government may strike hard blows but it

may not strike foul blows, blows below the belt, and I say that was done in this case.

In several instances he misrepresented the record to the jury. In talking about Cassell, for instance, he said Cassell and his lawyer never knew anything about it, referring to Johnson's legal work.

They didn't bring Cassell here to testify and they didn't bring his lawyer here to testify, and it was totally unjustified.

(Mr. Tydings) Robinson testified.

(Mr. Doub) He also stated Mr. Boykin said, he was quoting Boykin as follows, Mr. Boykin said, "He had boosted Johnson to Edlin to get compensation for his visits to Justice."

Frank Boykin never said that, never said that. It is a distortion of the record.

He also said before this case Johnson consistently said he had never represented First Colony and First Continental, and I deny that that was an accurate statement.

So I say, Your Honor, that those vilifications of Mr. Johnson by Mr. Marion was worse, far worse than anything that was done by the prosecutor in the Berger case.

(The Court) Since it is now ten o'clock and I came on early in order to hear Mr. Doub's motion and since Mr. Doub has not given record references but has agreed to supply them, I am not going to call on the Government to answer to that motion at this time.

I have arranged to have Mr. Owens come in and take this. Mr. Owens will go out now and write this motion up immediately so that the Government may have an opportunity to consider and to answer it, and if either side cares to present some sort of a draft of what you think should be said in some sort of informal fashion, I will be glad to consider that. I don't want any formal prayers but I just want to get a general idea of what each side thinks might be said if anything should be said.

All right.

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[988A] In the United States Court of Appeals for the Fourth Circuit

No. 9223

UNITED STATES OF AMERICA, APPELLEE

v.

THOMAS F. JOHNSON, J. KENNETH EDLIN, AND WILLIAM L. ROBINSON, APPELLANTS

Appeal from the United States District Court for the District of Maryland

ROSZEL C. THOMSEN, *Chief Judge*

Appellee's Appendix—Filed March 26, 1964

[File endorsement omitted]

[989] In United States District Court for the District of Maryland

Transcript of proceedings

[Testimony of Government Witnesses]

Thereupon,

* * * * *

JACKSON D. RAINS was called as a witness on behalf of the Government, being first duly sworn, was examined by counsel and testified as follows:

The CLERK. State your name for the record.

The WITNESS. Jackson D. Rains.

The CLERK. How do you spell your name, sir?

The WITNESS. R-a-i-n-s.

The CLERK. Take the stand, please.

Jackson D. Rains.

DIRECT EXAMINATION

* * * * *

Q. Can you tell us, sir, whether you have ever been employed by any of the defendants in this case?—A. Yes, sir, I have been employed.

Q. And by which of the defendants?—A. I was employed by the First Continental Mortgage Corporation by Mr. Edlin.

Q. And is that Mr. J. Kenneth Edlin?—A. J. Kenneth Edlin.

Q. Do you see him in the courtroom here today?—A. Yes, sir.

Q. Would you point him out, please?—A. [Points.] Sitting behind Mr. Robinson.

Q. [Indicating the defendant.] Can you tell the ladies and gentlemen of the Jury when you were hired, when you were first hired?—A. I was employed in August of 1958.

[990] Q. And for how long did your employment continue?—A. I was employed from that date until February of 1962 by various corporations.

Q. And where was it that you were hired?—A. In Miami, Florida.

Q. And who did the hiring of you?—A. Mr. J. Kenneth Edlin.

Q. What generally was your job; that is, what you were hired as?—A. I was hired as an accountant.

Q. To keep the books of any company?—A. To keep the books and records of First Continental Mortgage Corporation. That was the only corpration I knew about when I applied for the job.

Q. First Continental Mortgage Corporation?—A. Yes, sir.

Q. And did there come a time when you began to work on the books or the records of any other company?—A. Yes, sir, shortly after my employment I knew that the First Colony Savings and Loan Association, Prince Frederick, Maryland, had been in operation some months prior to my employment and the books and records were maintained in the Miami office of First Continental Mortgage Corporation.

Q. Books and records of First Colony?—A. Yes, sir.

Q. What books and records of First Colony were kept in the Miami office of the First Continental Mortgage Corporation?—A. All of the books and records.

Q. Can you describe them, please?—A. That consisted of the cash receipts, the cash disbursements journal, and within thirty days of my employment I set up a general ledger and transcribed the entries from the journal into the general ledger, and, of course, the posting of pass books for First Colony savings.

Q. Savers' pass books?—A. And also letters written to depositors answering inquiries was all done in my office [991] of the First Continental Mortgage Corporation.

* * * * *

Q. Now, can you tell us whether or not there came a time when an indictment was returned in this District against Mr. Edlin and others?—A. Yes, sir.

Q. Do you recall that time?—A. Yes, sir.

Q. And can you tell us approximately when that indictment was returned?—A. November 19, 1959.

Q. Who was the indictment against?—A. Mr. J. Kenneth Edlin, James W. Bridges, First Colony Savings and Loan Association, Rosabelle Edlin and myself.

Q. What were you all indicted for?—A. Mail fraud.

Q. Can you tell us whether it was in connection with the operation of any particular company?—A. The indictment?

Q. Yes.—A. It was in connection with First Colony Savings and Loan Association.

Q. Can you tell us whether or not there came a time that you met a man by the name of Martin Heflin?—A. Yes.

Q. When?—A. Early summer of 1960 in Miami.

Q. You met Mr. Heflin in Miami?—A. Yes, sir.

Q. Where in Miami did you meet him?—A. In the office of First Continental Mortgage Corporation.

Q. How if at all, did he fit into the organization?—A. He became the public relations man for the association in subsequent operations and headed up an Institute of Independent Savings and Loan Associations.

Q. You say he headed up an organization known as "The Institute of Independent Savings and Loan Associations"?—A. Yes.

Q. At the time that he came with the organization, who were the members, if you know, of the Institute of Independent Savings and Loan Associations?—A. Only two. First Colony Savings and Loan Association of Prince [992] Frederick, and First Continental Savings and Loan Association.

Q. What was First Continental Savings and Loan Association?—A. The charter was obtained at the same time that First Colony Savings and Loan charter was obtained but it was not activated until a much later date.

* * * * *

Q. Now, can you tell us whether or not there came a time when you became aware of a speech by Congressman Johnson?—A. Yes, sir.

Q. Can you tell us whether or not you had occasion to speak with Mr. Edlin about it?—A. Mr. Edlin showed me a typewritten carbon copy of a speech.

Q. Now, before you go on, can you tell us where this took place?—A. This took place on the premises of First Continental S[illegible]gs and Loan Association in the stationery room which was [illegible]ore or less a private office.

Q. Private office of whom?—A. Mr. Edlin used it as a private office when he wanted to discuss something in privacy.

Q. Can you tell us when this conversation took place?—A. This was either immediately before or immediately after the speech. I am not sure which.

Q. Now, tell us what took place at that time, please.—A. Well, naturally, Mr. Edlin was always concerned that I was under indictment and he frequently pledged to me that the indictment would never go to trial, that I would be out from under it.

* * * * *

Q. Tell us what was said during that conversation in the store room?—A. What was said in substance is, Mr. Edlin was saying to me—"you see, we have friends on the Hill—we have nothing to fear on our indictment. These people are interested in us and the injustice we have been done."

Q. Did Mr. Edlin show you this carbon of this speech?—A. Yes.

[993] Q. Did you read it?—A. I glanced over it hurriedly.

Q. Can you tell us how that compared, if at all, with the conversation which had taken place in the Congressional Hotel?—A. The pertinent points were there.

Q. Now, can you tell us whether or not at any time prior to that conversation you had had any conversations with Mr. Edlin with respect to the pending indictment?—A. When he informed me of my indictment, he called me to his home and he pledged to me that it would never go to trial, that we did

not intend to defraud and, therefore, they could never prove anything, and he constantly reiterated that statement to me almost daily.

Q. Now, around the time of this storeroom incident that you have related, did you have any occasion to take any airplane rides?—A. Yes, sir, this was just before the long 4th of July weekend, those of us who lived in Florida and were working up here went back in a body.

Q. Do you remember about when it was that you went back?—A. The usual pattern of departure was in the afternoon of the Friday and then returning Sunday but in this event, I believe the 4th fell on Monday and therefore, we came back on Monday afternoon.

The COURT. Is this the 4th of July, 1960, or some other year?

Mr. WEINER. 1960.

By Mr. WEINER:

Q. Now, who was present in this airplane in your party?—A. Mr. Edlin, Mr. Robinson, John Leier, Raymond Gannon, and myself.

Q. What, if anything, took place during that plane ride?—A. Everyone was in good spirits. Mr. Edlin and Mr. Robinson were sitting together and they were showing the speech back and forth and saying, jokingly, or facetiously, "how do you like the speech I wrote," and the otner one would say, "What do you mean, you wrote it? I wrote it," and that sort of thing. [994] Q. Now, the speech that you say they were showing back and forth?—A. The same carbon copy that they had shown to me.

Q. The same one that was shown to you?—A. Yes.

* * * * *

Q. Mr. Rains, I next show you government exhibit 12 for identification and I ask you if you can identify that.—A. This is a check drawn on First Continental Savings payable to Johnson & Johnson, Snow Hill, Maryland, $3500 May 2, 1961.

Q. Did you prepare this?—A. I did.

Q. At anyone's instructions?—A. Mr. Edlin's.

Q. Where was this prepared?—A. Chevy Chase, Maryland.

Q. How did you happen to make this payable to Johnson & Johnson, Snow Hill, Maryland?—A. I got that information from Mr. Edlin.

Q. All right.

Mr. WEINER. Your Honor—we would like to offer this into evidence, Government Exhibit 12.

The CLERK. Government 12 marked in evidence.

[Government Exhibit 12 received in evidence.]

Mr. WEINER. Your Honor, we would like to have marked as government Exhibit 26 for identification a book of check vouchers of the First Colony Savings and Loan Association.

The CLERK. Government Exhibit 26 marked for identification.

(Government Exhibit 26 marked for identification.)

* * * * *

Q. I show you Government Exhibit 26 for identification and I will ask you if you can identify that.—A. Yes. This is the numerical voucher copy of the checks and what you have shown me is a voided check and it was our practice to attach——

[995] Q. Of what company is that?—A. First Colony Savings.

* * * * *

A. This check is attached as you see, because it is voided and it was our practice to attach the original check to the copy in such cases.

Q. Now, do you recall typing that check?—A. Yes, sir.

Q. That I have shown you?—A. Yes.

Q. Was it typed under anyone's instructions?—A. Mr. Edlin's.

Q. Do you recall how or what you did with the check after typing it?—A. Not specifically. I am inclined to believe I mailed it because I have the complete address typed on the check and when I did that it was because we had window envelopes that the check would fit into for mailing.

Q. Can you tell us from looking at that whether it was voided at the time it was issued or whether it was voided some time later?

* * * * *

The CLERK. Government Exhibit 27 which is a check dated May 2, 1961 out of Government Exhibit 26, marked for identification.

* * * * *

Q. Can you tell from looking at the documents, the entries on Government Exhibits 26 and 27 and the cash disbursements

journal of First Colony Savings and Loan Association whether this check was voided immediately when it was issued or whether it was voided at some later time?—A. Yes, sir.

Q. You can tell?—A. Yes, sir.

Q. Can you tell us what you have determined from looking at them and the cash disbursements journal?—A. The check is written up in the cash disbursement journal on page 5–101. If this check had been voided immediately upon re- [996] ceipt, the entry would not appear with the amount listed. It would say "void."

* * * * *

Q. Can you tell from looking at the books whether it was voided before or after the close of the books for the month of May of 1961?—A. It would require a journal entry as of May 31, in order to void the check. That does not necessarily mean that the entry was actually made on May 31 but it was made some time subsequent to May 2 and before about June 10.

Mr. WEINER. Government Exhibit 26–A is the check voucher that says "Pay to the order of Johnson & Johnson, Snow Hill, Maryland, May 2, 1961, $1,500" and Government Exhibit 27 is the voided check.

By Mr. WEINER:

Q. Now, can you tell us whether or not it was your usual practice when a check was voided to tear off the edge of the check?—A. There would never be a reason for me to do that. I would tear the signature section off.

Q. Just this part here?—A. Yes.

Q. Now, directing your attention back to Government Exhibit 12, the First Continental Savings Check of May 2, 1961 in the amount of $3,500 to Johnson & Johnson, Snow Hill, Maryland, could you tell us how this was charged on the records of First Continental Savings and Loan Association?—A. This check was written up on the First Continental Savings Cash Disbursement Sheet 5–101, line 24. A credit of $3,500 drawn on the National Bank of Bethesda, Chevy Chase, and charged to account 4133 Legal Services—Special.

Q. Now, from that entry that you read, can you tell the ladies and gentlemen of the jury whether that was a disbursement from the general funds of the Association or whether that was a disbursement from any particular loan account of the

Association?—A. This was a disbursement from the general funds of the Association.

[997] Q. I show you Government Exhibit 13 for identification. I ask if you can identify that?—A. Yes.

Q. Did you draw that check?—A. I did.

Q. Under anyone's instructions?—A. Mr. Edlin's.

Q. Where did you draw that?—A. In Chevy Chase, Maryland.

Mr. WEINER. I offer that into evidence, Your Honor, Government Exhibit 13.

The COURT. First Continental.

Mr. WEINER. Yes, sir.

The CLERK. Government Exhibit 13 marked in evidence.

[Government Exhibit 13 marked in evidence.]

By Mr. WEINER:

Q. In the amount of $2,500. Government Exhibit 13 is a check of the First Continental Savings and Loan Association—Chevy Chase, Maryland, May 25, 1961, Pay the sum of $2,500 to the Order of Johnson and Johnson, endorsed Johnson & Johnson, containing the same "Pay to any Bank or Banker, Exchange Savings Bank, Berlin, Maryland." The voucher bottom half says 5–25–61, Legal Fees in Full—Brook, $2,500.00.

Could you tell us before I show this to the jury how that check was charged on the records of First Continental Savings and Loan Association?—A. This was written up in cash disbursements of First Continental Savings, sheet 5–109, line 31, $2,500. Drawn on the National Bank of Bethesda, Chevy Chase, Maryland, charged to account 4133, legal services—Special.

Q. Was this a disbursement from the general funds of the Association or from a loan account of the Association?—A. This was from general funds of the Association.

Mr. WEINER. Your Honor, the next thing I wanted to get into is another sheet of the exhibit that is going through [998] the jury. 26–A and 27. It seems to me they are almost finished.

Mr. WEINER. If Your Honor please, I would like to have marked Government Exhibit 26–B and 28—a check voucher and voided check dated May 25, 1961.

The CLERK. 26–B is to be what?

Mr. WEINER. 26–B should be the voucher and 28 the voided check.

The CLERK. Government Exhibit 26–B voucher marked for identification. Canceled check—voided check government Exhibit 28 marked for identification.

(Government Exhibit 26–B and 28 marked for identification.)

By Mr. WEINER:

Q. Mr. Rains, I show you a check voucher and voided check dated May 25, 1961 which are government Exhibits 26–B and 28 for identification and ask you if you can recognize these.—A. Yes, sir, I drew the checks.

Q. At anyone's instruction?—A. Mr. Edlin's.

Q. Where?—A. Chevy Chase, Maryland.

Q. Can you tell from looking at these checks and the books of First Colony whether this check was voided at the time of issuance or whether this check was voided some time later?—A. It was voided later. I can tell my my handwriting on the check voucher because I refer to a journal entry in voiding it.

Q. Now, can you tell us who it was if you know who was who tore off the end of those two checks?—A. I do not know.

Q. The one I showed you earlier and this one.—A. I do not know.

Q. You do not know who tore them up?

[999] Mr. WEINER. If Your Honor please, we would like to offer into evidence at this time Government Exhibit 26–B and 28 for identification.

The CLERK. Government Exhibit 26–B and 28 marked in evidence.

[Government Exhibits 26–B and 28 are received in evidence.]

Mr. WEINER. Government Exhibit 28 is the voided check of the First Colony Savings and Loan Association, Inc., Prince Frederick, Maryland, May 25, 1961, the sum of $2,500. Then there is a symbol Johnson and Johnson, and the bottom half of the exhibit, the check voucher in this case says 5–25–61, legal fees in full—Waldorf, $2,500.

By Mr. WEINER:

Q. Mr. Rains, I next show you Government Exhibit 14 for identification and I ask you if you recognize that.—A. Yes, I drew this check.

Q. Under anyone's instructions?—A. Mr. Edlin's.

Q. Where did you draw that?—A. In Chevy Chase, Maryland.

Q. All right.

Mr. WEINER. If Your Honor please, we would like to offer into evidence at this time Government Exhibit 14 for identification, check of First Continental Savings and Loan dated June 7, 1961, in the amount of $4,000.

The CLERK. Government Exhibit 14 marked in evidence.

[Government Exhibit 14 marked in evidence.]

By Mr. WEINER:

Q. Government Exhibit 14 First Continental Savings and Loan Association, Chevy Chase, Maryland, June 7, 1961, pay the sum of $4,000 to the order of Johnson & Johnson, endorsed Johnson & Johnson, pay to any Bank or Banker Prior Endorsement Guaranteed, Exchange and [1000] Savings Bank, Berlin, Maryland, Raymond F. Davis, (231) Cashier. The second half of the voucher reads 6–7–61 "Legal $4,000." Before showing this to the jury would you tell us what the entry in the books of First Continental Savings and Loan is with respect to this check?—A. The entry is in cash disbursements of First Continental Savings, page 6–104, line 9, $4,000 drawn on the National Bank of Bethesda, Chevy Chase and charged to account 4133 "Legal Services—Special."

Q. Can you tell us whether this was paid out of the general funds?

* * * * *

Q. I next show you Government Exhibit 15 for identification and ask if you recognize that.—A. Yes, sir, I drew this check on Mr. Edlin's instructions in Chevy Chase, Maryland.

Q. All right.

Mr. WEINER. If Your Honor please, I offer this in evidence. I offer Government Exhibit 15 for identification into evidence.

The CLERK. Check dated June 28, 1961, in the amount of $3,250. Government Exhibit 15 marked in evidence.

[Government Exhibit 15 marked in evidence.]

By Mr. WEINER:

Q. Government Exhibit 15—First Continental Savings and Loan Association, Inc., Chevy Chase, Maryland, June 28, 1961, pay the sum of $3,250 to the order of Johnson & Johnson, endorsed Johnson & Johnson with the stamp endorsement of "Exchange and Savings Bank, Berlin, Maryland, Raymond I. Davis, Cashier."

The second half of the voucher reads "6–28–61, Leisure City Funds. Legal $3,250."

Can you tell us how this was recorded on the books of the First Continental Savings and Loan Association?—A. This appears to be on cash disbursement sheet 7–102, $3,250 [1001] drawn on National Bank of Bethesda, Chevy Chase and it is charged to account 2016 which is the liability loan account set up in the First Continental Savings.

Q. It is charged against a loan account of First Continental Savings?—A. Yes, sir.

Q. To a loan account to what person or company?—A. This would be the loan to Leisure City, the notation on the voucher said "Leisure City Funds."

Q. This Leisure City that you are referring to, is that the Leisure City Land Corporation?—A. Yes, sir.

* * * * *

Q. You mentioned that these checks were reprints. Did there come a time when you were on the premises of First Continental Savings and Loan Association when you saw reprints of the Johnson speech?—A. Yes.

Q. When was that?—A. In early summer of 1960.

Q. Did you observe them being used on the premises of First Continental Savings and Loan Association?—A. I did.

Q. In what manner were these reprints used?—A. The staff was assigned the job of underlining in red or circling in red the pertinent points of the speech and these speeches were then enclosed with mailings going out to solicit deposits for the association.

Q. You mentioned salesmen. Telephone salesmen that the association had. Did any of those men come to the Maryland office when you were transferred?

* * * * *

Mr. WEINER. What, if any other use, was made of these reprints?

The WITNESS. They were used by the salesmen in Chevy Chase to show to customers who walked in.

[1002] By Mr. WEINER:

Q. Under any particular circumstances?—A. The first question that was usually asked by a potential depositor was, "Are you Federally"——

Mr. DOUB. Object, Your Honor.

Mr. TYDINGS. On what ground?

Mr. DOUB. He is not talking about a specific conversation. He is just talking and generalizing. It is the kind of thing that is almost impossible——

The COURT. He can say whether it happened once or several times. Let him finish the answer and then you can move to strike if he does not tie it in.

Go ahead.

The WITNESS. That the first question asked was, Are you Federally insured, and the salesmen used the speech and the underlining of the pertinent points to show that, to discredit the Federal Savings and Loan Insurance Corporation.

By Mr. WEINER:

Q. Did this happen once or more than once?—A. Frequently.

* * * * *

Q. Did you have any discussions with Mr. Edlin with respect to the pending indictment after this storeroom incident you described yesterday?—A. Yes.

Q. What took place during these discussions?—A. There again Mr. Edlin was saying to me in substance that we had nothing to fear on the indictment; that we had friends on the Hill that were interested in our cause.

Q. Did you have any conversations with Mr. Edlin with respect to the pending indictment subsequent to the national elections of November, 1960?—A. Yes, sir.

Q. Can you tell us the substance of those conversations?—[1003] A. The substance was the same for the most part but there were references to "Bobby."

* * * * *

Q. Can you recall what Mr. Edlin said to you?—A. Not specifically; only in substance.

Q. What was the substance of what he said to you?—A. That we were now going to the top.

Q. Did he mention anyone else by name? Did Mr. Edlin mention anyone else's name in these conversations?—A. He stated Congressman Johnson and Congressman Boykin were owed political favors by the Kennedys.

Mr. WILLIAMS. Will you fix that, please, in point of time?

Mr. WEINER. Can you fix the time when this was said?

The WITNESS. I cannot fix it exactly.

The COURT. Well, can you say, not by a day necessarily, was it in the first half of 1961 or the second half of 1961 or was it in some month? Can you fix it by month?

The WITNESS. I can identify it as being the first quarter of 1961.

* * * * *

Q. Now, can you tell, Mr. Rains, whether you ever had any occasion to be in Congressman Johnson's office after the first time that you mentioned earlier in your testimony?—A. Yes.

Q. When?—A. Mid summer 1961.

Q. Tell us about that.—A. I was called by Mr. Edlin on the telephone and he stated that the topside had heard the situation with regard to our indictment but they had one question that they wanted to ask. And this related to the First Colony Loan to Albert Cassell. And the question was how could you lend money that you did not have.

The pattern of the loan was that First Colony was to [1004] lend Cassell $400,000 approximately, with $150,000 being paid out at the first go-around.

Q. What do you mean by that?—A. The entire amount of the $400,000 was not to be paid out immediately. His first draw was to be $150,000.

Q. What was to happen with that $150,000?—A. It was a normal payout under the loan to Cassell. Under the loan agreement Cassell was to pay a total of some $300,000 and interest and commissions and Mr. Cassell was to repay the Association $150,000 at the time of the $150,000 payout. And the question was raised, "How could you pay out $150,000 if you did not have $150,000 in your bank account at that time?"

Q. As related to you by Mr. Edlin?—A. Yes. And he asked me what was the situation?

Q. The situation of what?—A. The cash situation at the time of the payout.

Q. Of what company?—A. First Colony Savings and Loan.

Q. What did you do?—A. I pulled the bank statement of that period. This was in December of 1958. The bank statement reflected $152,000 in the bank as of the day before the transaction and $152,000 in the bank the day after the transaction. This was to be presented in evidence that sufficient funds were in First Colony to make the payout.

He asked me—Mr. Edlin asked me to make a photostat of the bank statement and at the same time to bundle up some 25

or 30 sales contracts of persons who had purchased lots from Mr. Cassell in his development and that he and Mr. Robinson would be out to pick me up and we were going to take this information to Congressman Johnson's office.

Q. What, if anything happened?—A. They picked me up and took the data to Congressman Johnson's office. They went into his office. He was a few minutes late in arriving. [1005] When he did arrive, the bank statement was shown to him and the Cassell contracts were shown to him and Mr. Edlin made a statement as to the validity of the Cassell loan and that these contracts were proof that it was a good loan and the bank statement was proof that funds had been on hand to make the initial payout.

Q. Then what happened?—A. Congressman Johnson called Congressman Boykin down to the office.

Q. What happened then?—A. There was a discussion between Congressman Johnson and Congressman Boykin as to the best approach to Attorney General Robert Kennedy then on behalf of Mr. Edlin and the others under indictment, to have the indictment dismissed. He stated what he intended to say, that Mr. Edlin was an honest man.

Q. Who is "he"?—A. Congressman Johnson. That Mr. Edlin was an honest man engaged in an honest effort. He had not intended to defraud anyone and that the indictment should be dismissed.

Q. Was there any conversation as to whether they had been to see the Attorney General before that meeting that you were at?—A. I do not recall that. The main conversation was whether or not the two Congressmen would go to see the Attorney General together or separately.

Q. What, if anything, did Mr. Edlin say?—A. Mr. Edlin did not say much but toward the end he stated that, words to the effect, "I have had it. How can I do a job on this land development unless you get this monkey off my back?"

Q. I direct your attention to November or December, 1961 and I ask you if you happened to have overheard any conversation between Mr. Edlin and Mr. Robinson?—A. Yes, sir.

Q. And what was that conversation?—A. This was during a period when the press was lambasting the independent savings and loans and Mr. Edlin was quite concerned about First Continental Savings.

[1006] Mr. DOUB. When was that?

Mr. WEINER. Can you tell us about when that was?

The WITNESS. It was in the latter part of 1961.

By Mr. WEINER:

Q. Tell us about the conversation.—A. Congressman Johnson was overseas and he was anxious to have the Congressman return.

Q. Who was anxious?—A. Edlin, I do not know any of the details as to what the Congressman could have done.

Q. What did you hear in this conversation?—A. Edlin was quite disturbed and he blurted out, "We have got to get that s.o.b. back here. We have paid him enough money." The "s.o.b." was not said detrimentally, it was just an explosion.

Mr. WILLIAMS. Was not said detrimentally, is that it?

The WITNESS. Was not said detrimentally.

Mr. DOUB. Just affectionately.

By Mr. WEINER:

Q. Now, did there come a time shortly after this conversation when you overheard any plans being made for any trip by Mr. Edlin and/or Mr. Robinson?—A. The only trip that I recall in that period was a flurry of excitement of telephoning to Mobile and they both went, Robinson and Edlin, went to Mobile.

Q. Mobile what?—A. Alabama.

* * * * *

Thereupon RAYMOND J. DAVIS, a witness, having been first duly sworn, was examined and testified as follows:

The CLERK. State your name.

[1007] The WITNESS. Raymond J. Davis.

The CLERK. Take the stand, Mr. Davis.

The COURT. Now, the next witness can be kept in the grand jury room.

Mr. TYDINGS. The next witness is up here, Your Honor.

DIRECT EXAMINATION

By Mr. MARION:

Q. Mr. Davis, where do you reside?—A. In Berlin, I suppose you could say.

Q. Berlin, Maryland.—A. We say Berlin, Eastern Shore.

Q. By whom are you employed?—A. Exchange and Savings Bank.

Q. That is the Exchange and Savings Bank of Berlin, Maryland?—A. Yes, sir.

Q. And you are the cashier and the officer-in-charge of that bank, are you?—A. Yes.

Q. You are appearing here today pursuant to a subpoena, is that correct?

* * * * *

Mr. MARION. Perhaps I could speed things up by leading the witness to references to the specific ledger cards if there is no objection.

Mr. WILLIAMS. Your Honor, I assume these ledger cards are being offered simpyl to show that these particular checks were deposited in Mr. Johnson's account. As far as we are concerned, we will stipulate to that. I do not know how Mr. Doub feels about it.

Mr. DOUB. Anything the bank records show, certainly.

* * * * *

[1008] Mr. WILLIAMS. Your Honor, may I say for the record—I would like the record to show, Your Honor, that each time that the Government has asked the Defendant Boykin, through his counsel, to stipulate in order to avoid the necessity of proof, we have agreed to do so immediately and I will willingly stipulate to the admissibility of these records without the necessity of proof.

The COURT. I will tell the jury—the jury are not to consider that anyone has delayed the case by refusal to stipulate to anything nor has the Government delayed the case by proving facts as to which the defendants might have been willing to stipulate. I try to make that even for everyone. That is not the case. We are trying to get the facts. I am trying to speed the trial up and no doubt each person wants to speed the trial up as fast as he can consistent with the interests of the side he represents and we will try to keep the ball rolling.

* * * * *

Mr. MARION. The next check is a check dated March 31. 1961, drawn on the account of W. L. Robinson, Industrial National Bank of Miami, Florida, pay to the order of Johnson & Johnson, $800. The check is endorsed "Johnson & Johnson" and bears a bank stamp of the Exchange and Savings Bank, April 7, 1961. And included with that is a deposit slip of the Exchange and Savings Bank of Berlin deposited by

Thomas F. Johnson, Special Account No. 1, April 7, 1961, $800.00.

The records of the Exchange and Savings Bank Ledger Sheet No. 56, indicates that a deposit of $800 was made to the Special Account of Thomas F. Johnson on April 7, 1961.

We offer the photostatic copy and the deposit slip in reference to that check.

The CLERK. Government Exhibit 62 marked in evidence.

[Government Exhibit 62 marked in evidence.]

* * * * *

[1009] Mr. MARION. The next one is check drawn on the account of W. L. Robinson, Office Account, at the Industrial National Bank of Miami, Florida, check is dated August 4, 1961, pay to the order of Johnson & Johnson, $2,000 check is endorsed "Deposit only" Johnson & Johnson, and bears an impression of the bank stamp of the Exchange and Savings Bank August 7, 1961. With that is a deposit slip of the Exchange and Savings Bank deposited by Thomas F. Johnson, Special Account No. 1, August 7, 1961, $2,000. Ledger sheet No. 57 of the Exchange and Savings Bank, the account of Thomas F. Johnson, Special Account, indicates a deposit of $2,000 made on August 7, 1961.

The CLERK. Government exhibit 67 marked in evidence.

[Government Exhibit 67 marked in evidence.]

Mr. MARION. The next exhibit which I propose to offer, if Your Honor please, the microfilm was too blurred to allow a reproducible photostatic copy. I think that another witness will produce a photostatic copy of the check which we are dealing in this instance, and I would merely offer on this occasion the deposit slip of the Exchange and Savings Bank of Berlin deposited by Thomas F. Johnson, Special Account No. 1, September 19, 1961, a check in the amount of $1,500 and note that the ledger sheet of the Exchange and Savings Bank, Special Account of Thomas F. Johnson shows a deposit of $1,500 on September 19, 1961.

The CLERK. Government Exhibit 68 marked in evidence.

[Government Exhibit 68 marked in evidence.]

By Mr. MARION:

Q. Now, Mr. Davis, would you state whether or not Congressman Johnson was allowed immediate credit by your bank on these checks which were deposited by him to his account?—A. He was.

Q. And why was he allowed immediate credit on his [1010] checks which he deposited?—A. Any depositor of 25 years good standing would be allowed the same thing.

Q. Was he able to, if he so desired, to withdraw from his account the amount of a check which was deposited to his account?—A. He was.

Q. Even though it may have been drawn on a bank in Florida?—A. He was.

Q. And he could have drawn that immediately upon his depositing such a check?—A. After the good standing that he has, yes.

Q. This was not a special favor accorded to him?—A. Not to him any more than any other customer of good standing.

Q. This is done for anyone that the bank knows as a member of the community?—A. That is right.

* * * * *

REDIRECT EXAMINATION

By Mr. MARION:

Q. Mr. Davis, if you have a depositor who is unknown to the bank or comes in unknown to the bank or who is not in good standing and he brings you a check on a Florida bank for $800, would you let him draw that $800 out as soon as it is deposited in his account?—A. No.

Q. Conversely, if that man were Congressman Johnson or some depositor in good standing, could he draw that $800 out?—A. Sure.

Q. Before the check has been processed?—A. Sure.

* * * * *

Thereupon MARY B. MITCHELL a witness, having been duly sworn, was examined and testified as follows:

[1011] The CLERK. State your name.

The WITNESS. Mary B. Mitchell.

The CLERK. Take the stand, please.

DIRECT EXAMINATION

By Mr. WEINER:

Q. Tell the jury your address.—A. 1840 Caribbean Boulevard, Miami Beach, Florida.

Q. And your occupation?—A. Vice president and cashier of the Industrial National Bank of Miami.

Q. Of the Industrial Bank of Miami?—A. Industrial National Bank of Miami, yes.

Q. As vice president and cashier, do you have any duties with respect to the Industrial National Bank?—A. I do.

Q. What are they?—A. I supervise the operations of the bank and of the personnel.

Q. Now, you have been asked to bring here today by subpoena certain records of your bank with respect to an account or accounts in the name of W. L. Robinson. Now, directing your attention to the years 1960 and 1961, did your bank have an account or accounts in the name of W. L. Robinson?—A. We did.

* * * * *

Q. Can you tell us whether the regular account of Mr. Robinson shows a check of March 31, 1961 payable to Johnson & Johnson, in the amount of $800?—A. It does.

Q. And do you have a photostat of that check?—A. I do.

Q. Is that the same check which, the photostat of which was produced through the Exchange and Savings Bank and is marked government exhibit 62.—A. It is.

Q. Now, do you have with you the ledger sheet of Mr. Robinson's regular account for that period?—A. I do.

[1012] Mr. WEINER. If Your Honor please, we would like to offer into evidence the ledger sheet of the regular account of W. L. Robinson, with an opening date of March 31, 1961 as government exhibit 80.

The CLERK. Government exhibit No. 80 marked in evidence.

[Government exhibit 80 marked evidence.]

By Mr. WEINER:

Q. Now, can you tell us what the balance was in Mr. Robinson's regular account on that date March 31, 1960?—A. It was overdrawn $2.84.

Q. You say it was overdrawn $2.84?—A. Yes.

Q. Now, on what date was that $800 check paid by your bank?—A. April 12, 1961.

Q. Now, between March 31, and April 12 of 1961, were there any deposits into this account of Mr. Robinson?—A. There were two: One on April 5 for $200 and one on April 6 for $800.

Q. And do you have with you a copy of that $800 check?—A. I do.

Q. Which was deposited in Mr. Robinson's account on April 6?—A. I do.

Q. And is that a check dated April 5 of 1961?—A. Drawn by the First Continental Savings and Loan Association on the National Bank of Bethesda.

Q. Check of First Continental Savings and Loan?—A. Yes.

Q. Payable to W. L. Robinson in the amount of $800?—A. Yes.

Q. Is that the same check which is government exhibit 11?—A. Yes.

* * * * *

[1013] Q. Can you tell us whether the records of your bank show check drawn on the office account of Mr. Robinson dated August 4 of 1961 payable to Johnson & Johnson in the amount of $2,000?—A. They do, check No. 1495.

Q. Now, I show you a photostat of record of the Exchange and Savings bank of Berlin which is marked government exhibit 67, and I ask you if this check of W. L. Robinson dated August 4, 1961, payable to Johnson & Johnson in the amount of $2,000, is the check that you have just referred to?—A. Yes.

Q. Tell us the balance—do you have the ledger sheet of that account of Mr. Robinson for the period including August 4?—A. I do.

Mr. WILLIAMS. Is that in evidence?

Mr. WEINER. We would like to offer into evidence as government exhibit 81 the ledger account of W. L. Robinson office account, beginning with the opening entry of July 31, 1961.

The CLERK. Government exhibit 81 marked in evidence.

[Government exhibit No. 81 marked in evidence.]

By Mr. WEINER:

Q. Can you tell us the balance in the W. L. Robinson account—office account on the date of this check, August 4, 1961?—A. $18.82.

Q. $18.82.—A. Yes.

Q. Can you tell us the date on which the $2,000 was paid out on this check?—A. August 10, 1961.

Q. August 10, 1961?—A. Yes.

Q. Can you tell us whether there were any deposits in this office account of Mr. Robinson between August 4 of 1961 and the date on which the $2,000 was paid?—A. There were two. One on August 7 for $85.40.

Q. For $85.40?—A. Yes. One on August 8 for $2,036.00.

[1014] Q. One on August 8 for $2,036.—A. Yes.

Q. These were the only two deposits in that account for that period?—A. Yes.

Q. Do you have with you a photostat—first of all, do you have with you the deposit slip of Mr. Robinson whereby he deposited $2,036?—A. I do.

Q. All right.

Mr. WEINER. Your Honor please, we would like to offer into evidence as Government exhibit 82 the deposit slip of W. L. Robinson dated August 8, 1961.

The CLERK. Government exhibit 82 marked in evidence.

[Government exhibit No. 82 marked in evidence.]

Mr. WEINER. And this shows that the $2,036 deposit was made up of a deposit of a $2,000 check and a $36.00 check, is that right?—A. Yes.

Q. Do you have a photostat of the $2,000 check which was deposited into that account?—A. No, sir.

Q. Can you tell us why you do not have that?—A. The reel of microfilm was lost or missent by the Recordak Corporation and has never been returned to us. We tried to trace it back through our records and we have details as to description but we have no pictures.

Q. Now, I show you an original check drawn on the Leisure City Land Corporation dated August 7, 1961 which is the government exhibit 16 and in the amount of $2,000 and I ask you whether you can tell us if that is the check which was deposited into the account?—A. That is our endorsement, yes, sir.

Q. Does it show the date?—A. It is over-printed but it appears to be August of 1961. I cannot make out the middle date.

* * * * *

Q. I next ask you whether your records show a check drawn on the regular account of Mr. W. L. Robin-[1015]son, dated September 12, 1960, in the amount of $1,500 payable to Johnson & Johnson, attorneys?—A. I do. It is check No. 1510.

Q. Check 1510.—A. Yes.

Q. Dated September 12, 1961?—A. Yes.

Q. Do you also have with you the ledger sheet of this account of Mr. Robinson for that period?—A. Yes.

Mr. WEINER. If Your Honor please, this, too, is a check out previously in evidence in any form. I would like to offer into evidence as Government exhibit 83 a check dated September

12, 1961, to the order of Johnson & Johnson, attorneys. Amount $1500.

The CLERK. Government exhibit 83 marked in evidence.

[Government exhibit 83 marked in evidence.]

The COURT. That is the one that ties in with deposit slip 68.

Mr. TYDINGS. That is correct, Your Honor.

Mr. WEINER. I would like to offer into evidence as government exhibit 84 two sheets, two ledger sheets of the regular account of W. L. Robinson, the first beginning August 31, 1961, the second beginning September 29, 1961.

The CLERK. Government exhibit 84 marked in evidence.

[Government exhibit 84 marked in evidence.]

* * * * *

Mr. WEINER. Government exhibit 83 is a check dated September 12, 1961, pay to the order of Johnson and Johnson, attorneys, $1500 signed W. L. Robinson, endorsed Johnson and Johnson, attorneys, Thomas F. Johnson.

By Mr. WEINER:

Q. Now, Mrs. Mitchell, do the ledger sheets show what balance was in Mrs. Robinson's (sic) account on September 12 of 1961?—A. They do.

[1016] Q. And what was the balance in that account on that date?—A. $72.18.

Q. $72.18?—A. Yes.

Q. On what date was that check of September 12th paid out by your bank?—A. October 6.

Q. October 6. Now, between September 12, the date of the check, and October 6, the date on which the check was paid out, were there any deposits into Mr. Robinson's bank account?—A. Yes, there were two.

Q. There were two?—A. Those on the 21st day of September, one for $148.50 and the other one for $1,498.00.

Q. There was a deposit—one for $140-something and one for $1,498.00?—A. That is right.

Q. Do you have with you a copy of the check which was deposited for which the $1,498 credit was given?—A. I do.

Q. Now, was that a $1,498 check, or was that a check in a larger amount?—A. That was a check for $1500 drawn on the Gotham Bank by the Charles County Land Company, and it was sent as a collection item. The Gotham Bank made a dollar exchange charge and our bank made a dollar exchange charge.

Q. The $1498 was a $1,500 check from which the $2 was deducted?—A. Yes.

* * * * *

Mr. MARION. The Government calls Mr. T. Lamar Caudle.

T. LAMAR CAUDLE a witness, having been first sworn, was examined and testified for the record as follows:

The CLERK. State your full name for the record.

The WITNESS. Theron Lamar Caudle.

The CLERK. Take the stand, please.

[1017] DIRECT EXAMINATION

By Mr. MARION:

Q. Mr. Caudle, where do you reside?—A. Waynesboro, North Carolina.

Q. Are you an attorney?—A. I am an attorney.

Q. Do you practice law in Waynesboro, North Carolina?—A. That is my home town. I was born there and I practice law there, yes, sir.

Q. Waynesboro is about fifty or sixty miles southeast of Charlotte, North Carolina, is it not?—A. Fifty-three.

Q. Near the South Carolina border?—A. It is about fourteen miles from South Carolina.

Q. Now, Mr. Caudle, just by way of background, in 1940 you were appointed a United States Attorney for the Western District of North Carolina, were you not?—A. Yes, I was nominated by Mr. Roosevelt.

Q. And served in that position until 1945?—A. Yes, I was renominated again. It is a four-year term. I was renominated again by the President in 1945 and confirmed after the nomination, of course.

Q. In 1945 you were appointed Assistant Attorney General in charge of the criminal division of the Department of Justice, were you not?—A. Yes, by President Truman, by Mr. Clark.

Q. And remained in that specific capacity until 1947 when you became the Assistant Attorney General in charge of the tax division?—A. In September, 1947 and then he ordered me transferred as supervisor of the Tax Division.

Q. How long did you remain as attorney general in charge of the Tax Division of the Department of Justice?—A. Four years.

Q. Until when?—A. November 16 at 3 o'clock in 1951.

* * * * *

[1018] The COURT. I will sustain the objection unless you have any possible admissible conversation that you can make the proffer. You cannot talk about conversations between them, because the relationship was either attorney-client or so close to attorney-client that we are now going to treat it as such unless you want to treat it different. You can have him testify to what, if anything, he did, not as to what, if anything, Mr. Edlin may have told him or said to him or may not have said. I don't intimate that Mr. Edlin did say or didn't say. Go ahead.

By Mr. MARION:

Q. Did you have occasion thereafter to meet Congressman Johnson?—A. I did.

Q. Where did you meet him?—A. In his office.

Q. In his congressional office?—A. Yes, in his Congressional office.

Q. In Washington?—A. In Washington, D.C.

Q. In the Old House Office Building?—A. Old House Office Building.

Q. Who was present with you at the time you met him?—A. Mr. Edlin and Mr. Robinson.

Q. Do you recall what, if anything, took place?

Mr. DOUB. Would you have him first identify the time? When was this?

By Mr. MARION:

Q. Do you recall when it was in relation to when Congress reconvened?

The COURT. Let him say if he can do it. Then you can lead him to it if he doesn't remember.

The WITNESS. Congress was in session at the time I met Congressman Johnson.

By Mr. MARION:

[1019] Q. Can you be more specific as to the time of this meeting?—A. Well, it was prior to March, March 1961. I would say—I just forget the date I met the gentleman.

The COURT. But you put it between January 1961 and March 1961?—A. Yes, sir.

Q. What, if anything, took place when you first met Congressman Johnson?—A. There was discussion in the presence of Mr. Edlin and Mr. Robinson about the indictment that in-

volved Mr. Edlin, his sister, First Colony Savings and Loan Association and Mr. Jackson Rains.

Q. Can you recall the substance of that discussion?—A. The substance of that discussion, the first one?

Q. Yes, sir.—A. I told—well, it was either this one or the next one. I can't remember what specific time I was there. But I explained to Mr. Johnson——

Mr. DOUB. Is this the first time or the second time?

The WITNESS. I can't tell which one it was. I don't know.

By Mr. MARION:

Q. Either the first or second time that you were there?—A. Yes, sir.

The COURT. How soon after this first time was the second time? Was it a day or two, a week or two, a month or two, or longer?

The WITNESS. Well, I would say it would be probably a few days from the first time, Your Honor. I don't know. Now, what do you want me to tell you?

Mr. DOUB. Let me help you. Were the same people there the second time as the first time?

The WITNESS. Yes, sir.

By Mr. MARION:

Q. All right. You were starting to say what you explained [1020] to Congressman Johnson at that meeting.—A. I explained to Congressman Johnson that an indictment was an instrument where the grand jury found probably (sic) cause to allegations of some violation of the Federal law or a state law, for that matter, and that it was extremely difficult and very hard, unless it could be overwhelmingly shown that the Government was in error, to have the indictment once it was returned dismissed; that it was very rarely ever when I was associated with the Department of Justice that an indictment was dismissed, but indictments were dismissed when it was conclusively shown that the Government was in error by its own attorneys, and they were dismissed.

Q. What, if anything, did Congressman Johnson say when you advised him of that?—A. Congressman Johnson, from my conversation with him, we didn't go into the merits at that time, but he was very much familiar with the subject. I had been with the subject off and on.

Q. What did he say when you advised him what you just indicated?—A. He said that was true; that it was a very difficult

thing, even in the state courts, after the indictment had been returned because the grand jury had found probable cause.

Q. What, if anything, did Mr. Edlin say at that time?—A. I do not know what Mr. Edlin said at that time. Mr. Johnson was a lawyer and I was a lawyer. He listened a great deal, particular when I described again—I had done it before—the procedures that ought to be followed to bring this thing into focus. The indictment contained 31 paragraphs. It was a long instrument, and any attorney reading it would have to read it over and over and then have many conferences before the thing would become in focus to him, in my opinion. I told Mr. Johnson that, and I told Mr. Edlin that.

* * * * *

The CLERK. Resume the stand, Mr. Caudle. You are still under oath, sir.

[1021] Thereupon T. LAMAR CAUDLE a witness, having been previously sworn, resumed his testimony further as follows:

* * * * *

The COURT. Now, before he answers, let me make this caution that I did say I would make to Mr. Caudle. Just remember to answer the questions that are put to you because you realize, as well as we do, that there are certain border lines of privilege, certain things you can testify to and certain things that you can't.

* * * * *

Q. All right, Mr. Caudle, let me withdraw that question.

How many conferences do you recall sitting in on in Congressman Johnson's office in connection with this particular matter?—A. That was probably three or four maybe on this subject.

Q. And who were present during those meetings as best you can recall?—A. Mr. Edlin was present; Mr. Robinson was present; Congressman Johnson was present and I was present.

Q. Did there come a time in any of those conferences when Congressman Boykin was present?—A. I do not think Congressman Boykin was in any of these early conferences with Congressman Johnson.

Q. You speak of early conferences. What do you mean by early conferences?—A. I mean when we began to discuss the

question of the subject matter which you brought to my attention a moment ago.

Q. All right. Now, as a result of those three or four conferences, was any decision reached as to something which you would do?—A. Yes, sir.

Q. What was that?—A. That, with the assistance of Mr. [1022] Robinson, we would analyze and prepare an analysis of the 31 paragraphed indictment.

Q. And with whom did you discuss that?—A. Congressman Johnson in the presence of Mr. Edlin and Mr. Robinson.

Q. What do you recall Congressman Johnson saying about the preparation of such an analysis, if anything?—A. He thought that my idea about the matter is proper and that it ought to be done.

Q. And what, if anything, did he ask you to do?—A. He asked me, would I and Mr. Robinson work on the matter and prepare it? I told him I would but it could not be done in Washington because there were no facilities there to do the work.

Q. And what do you mean by "no facilities" there to do the work?—A. There was not any legal secretary.

Q. Where?—A. In the First Continental Savings and Loan Association. There was no office and I simply did not have any place to work and neither did Mr. Robinson have on the matter of this indictment analysis.

Q. And so what, if anything, was done as a result of that conversation?—A. In consequence of that conversation Mr. Robinson and I flew to Miami, Florida.

Q. And can you recall when it was that you flew to Miami, Florida?—A. Yes, it was around about March 18, 1961. We were there for four days, if I remember.

Q. And what did you do while you were in Miami?—A. Went to Mr. Robinson's office where he had a very able secretary and he was very well saturated, I would say, with the facts so he was to dictate it. I was to be present and we were to be as minute and accurate as we could on the facts as to each paragraph, and that went on all day and into the night as long as we could take it, the next day, the next night, the next day and the next night. Then it took a day as I remember for it all to be typewritten.

[1023] Q. And what was your function in connection with that? What actually did you have to do with it?—A. I was

really supervising the analysis and you might say I was co-author of it with Mr. Robinson.

Q. Was a draft being prepared as it was being dictated?—A. I think so, yes, sir.

Q. And what, if anything, to the best of your recollection was done with copies of that draft as it was being prepared?—A. I think Mr. Robinson furnished Congressman Johnson, the best I can recall, with the copy.

Q. Do you recall approximately how long you stayed in Miami?—A. Yes, sir, we stayed there until March 18 to the 23rd as far as I can recall.

* * * * *

Q. What, if anything, was taken with you on your return to Washington?—A. I think we brought back the original analysis that the secretary prepared.

Q. What, if anything was done with that analysis upon your return to Washington?—A. You mean what we did with it?

Q. Yes.—A. Gave it to Congressman Johnson in his office.

Q. Who was present when you gave it to Congressman Johnson in his office?—A. I know that Mr. Robinson and I were together, and whether Mr. Edlin was along at this time, I do not remember.

Q. All right. What, if any conversation took place at that time?—A. Congressman Johnson said that he wanted to study it thoroughly and he would talk with us again about it. As I remember, the best I can remember.

Q. Did you have occasion to discuss it further with him?—A. Yes, sir.

Q. Do you recall how soon thereafter that was?—A. I do not remember but it was pretty shortly after that. He said he studied it very carefully. He was very much impressed with it. [1024] Q. Who was present on this occasion when he said he had studied it?—A. Mr. Robinson was present I remember, and Mr. Edlin.

Q. Who else was present, if any one?—A. Congressman Boykin came in along about that time for a few minutes and he would not stay but a few minutes, maybe once or twice. Could have been three times. I do not know.

* * * * *

A. Mr. Boykin came in for a few minutes. He never stayed long. I think he came at least two times if I can remember.

I do not think—He spoke to everybody in the office as he usually does and I did undertake to explain this thing to him, a long analysis on a 31-paragraph—31 page indictment, and it was prepared for the purpose of presenting to the Department of Justice for it to be reviewed and evaluated on its merits.

Q. How did you know that?—A. How did I know that?

Q. Yes.—A. Well, I knew. I had told Mr. Edlin and I had told Mr. Robinson and I told Mr. Johnson that the Justice Department was an institution of record and that the only way that the defense of Mr. Edlin and his sister and First Colony, and Mr. Jackson Rains could be brought into force, this analysis would have to be prepared and should be left with the Justice Department and those in the Criminal Division who would administer the statute. They would be the ones that would have to study it and evaluate it to get any action on the merits of the matter.

Q. All right, now, in the conversation, in the course of this meeting where you say Congressman Johnson told you he had studied the analysis and thought it was ably done, what else was discussed, if you can recall at that particular conference?—A. I declare I cannot remember that particular conference.

Q. What, if anything, was discussed about the Department of Justice, and who might be contacted there?—A. [1025] Oh, Congressman Boykin said that he knew the Attorney General, Mr. Kennedy, and as I understood, Congressman Johnson did not know him, and that they would take it over and present it to Mr. Kennedy, that they would go over and have a conference with the Attorney General at his level because they were members of the House.

Q. Because they were Congressmen?—A. Yes, that is right.

Q. Do you know whether, shortly thereafter, after that particular conference, anyone did go to the Department of Justice to see the Attorney General?—A. Yes, sir.

Q. How do you know that?—A. Because Mr. Edlin and Mr. Robinson kept up with Congressman Johnson's office, one of the two, and they wanted to know what was the reaction, and the reception they received on the subject and so we went back to Congressman Johnson's office.

Q. Who was present when you went back to Congressman Johnson's office?—A. I know Congressman Johnson was there and, of course, his secretary and force were out of the office, Mr. Robinson and Mr. Edlin were there.

Q. Was Congressman Boykin there?—A. I think Congressman Boykin came down a few minutes after we were there for a little while.

Q. What, if anything was said during that time?

Mr. WILLIAMS. During what time?

Mr. MARION. During the time when Congressman Boykin, Mr. Edlin and Mr. Robinson were present with you.

Mr. WILLIAMS. At any time that the four were there?

The COURT. It was, altogether, five.

Mr. MARION. The four defendants and Mr. Caudle.

The COURT. Mr. Johnson, Mr. Boykin, Mr. Edlin and Mr. Robinson were there with the witness.

[1026] The WITNESS. Mr. Boykin stated that Mr. Kennedy was very patient with them. That he knew very little about the facts if any at all, but Mr. Johnson was the one who presented it to Mr. Kennedy, and I recall that Congressman Boykin said that Mr. Johnson made a very able presentation of the matter and that he just sat and listened.

* * * * *

Q. Mr. Caudle, I show you a document consisting of many pages and ask if you can identify part of it?—A. Yes, sir, this is the analysis or memorandum or whatever you want to describe it. The work that Mr. Robinson and I did down in his office in Miami.

Q. All right. Now, there appears to be a letter on the top. Do you know anything about that letter?—A. No, sir.

Q. And under the letter there appear to be two typewritten pages. Were those two pages attached when you delivered it to Congressman Johnson?—A. Not that I remember, sir; not that I remember.

Q. And also included in the body of the memorandum there appear to be several pages typed on a different typewriter. Were those pages typed on a different typewriter?

* * * * *

The CLERK. Government Exhibit 86 marked for identification.

[Government exhibit 86 was marked for identification.]

The COURT. No. 86 for identification. Would you mark also the top letter?

You are not entitled to it yet, Mr. Doub. It is still being identified. You will see it before it is offered in evidence. I think we want to get some more markings.

Mr. Marion, would you let Mrs. Zielinski mark the letter on the top 86–A for identification, and the two pages underneath the letter to which you refer, mark that 86–B for identification, and then you started to refer to some [1027] other pages, and I think those other pages which are in different type and to which you wish to call his attention should be designated 86–C, and if they are altogether, that will be easy. If they are scattered, mark them 86–C–1, C–2, C–3 and so forth so that we will know what the witness is talking about.

* * * * *

Mr. MARION. I must go one step further and go through the different type.

Just so the record will be clear, I am going to ask him about pages 9, 11, 15, 23, 24, 26 and 29.

The COURT. Are they the ones in different type that you speak of?

Mr. MARION. Yes.

The COURT. So they are the ones that will be 86–C and these numbers can just go along with it. 86–C 9, 11, 15, 23, 24, 26, 29, giving the page numbers. Are all a part of 86–C.

[Government exhibit 86–C was marked for identification.]

* * * * *

Mr. MARION. The Government calls Mr. Louis Goldman.

[The jury returned to the courtroom.]

Thereupon, LOUIS D. GOLDMAN was called as a witness by and on behalf of the Government, being first duly sworn, was examined and testified as follows:

The CLERK. State your name for the record.

The WITNESS. Louis D. Goldman.

[1028] The CLERK. How do you spell Louis?

The WITNESS. L-o-u-i-s.

The CLERK. Louis D. Goldman. Take the stand, please.

DIRECT EXAMINATION

By Mr. MARION:

Q. Mr. Goldman, I think if you will pull the microphone in a little closer and keep your voice up.

Where do you live, Mr. Goldman?—A. 1605 Bay Road, Miami Beach, Florida.

Q. And what is your occupation, Mr. Goldman, at the present

time?—A. I am a teacher of business law at the Dade County Board of Public Instruction, Miami, Florida.

Q. And are you also an attorney, Mr. Goldman?—A. Yes, sir.

* * * * *

Q. You mentioned there was a third occasion when you were present where legal matters were discussed?—A. Yes, in the Congressman's office there had been a discussion prior to going there, that he was to examine certain loan agreements at this particular time for a loan that was pending in First Colony.

Q. Pending to whom?—A. To Cassell.

Q. A. I. Cassell?—A. Cassell Land Company—something, and Mr. Edlin wanted Congressman Johnson to review it, check it out and see that everything was all right with reference to the agreements to make sure that, if there was a default, if there should be a default, why the Association would be protected.

Q. Now, did you hear any discussion between—any discussion involving either Mr. Edlin or Mr. Robinson, relating to the submission of those loans to Congressman Johnson?—A. Mr. Robinson had brought the loan agree-[1029]ments in a very large red envelop and left it with the Congressman on his desk.

I do not recall any particular discussions with regard to the agreements at that time.

Q. Were there discussions which you participated in with either Mr. Edlin or Mr. Robinson relating to those loans at other times?—A. Yes, I had mentioned the fact to Mr. Edlin that I had been under the impression that they had been reviewed by Mr. Adelberg.

Q. Before or after they had been reviewed by Congressman Johnson?—A. I think they were before and after both.

Q. All right, what was the nature of your discussion with Mr. Edlin?—A. I mentioned the fact that I was under the impression that these loan agreements had been examined by Mr. Adelberg, also an attorney of Baltimore, and why was he giving it to the Congressman to review again.

Mr. Edlin told me that he wanted to make certain that everything was all right. That we would not run into any difficulties if there was any defaults and there had to be a foreclosure and he also mentioned the fact that he wanted to keep Congressman Johnson happy.

Q. And did you have any discussion relating to the same subject with Mr. Robinson?—A. Yes, I had spoken to Mr. Rob-

inson about it. I was curious as to why the agreements were given to the Congressman to review and Mr. Robinson told me that, as he put it, "Ken wanted to make sure that everything is all right. Ken wants to keep the Congressman happy." And "it will probably come in handy for Ken."

Q. Did you have such conversations with Mr. Edlin or Mr. Robinson once or more than once?—A. I think it was more than once.

* * * * *

Q. Now, directing your attention to the year 1961, would you state whether or not you ever heard any state-[1030]ments made either by Mr. Edlin or by Mr. Robinson, or both, relating to the pending indictment against Mr. Edlin?—A. I heard—Mr. Edlin from time to time would say that he had nothing to worry about the indictment.

That his friends on the Hill would take care of it for him and that everything would turn out all right.

Q. Did he indicate anything further in such conversations?—A. No.

Q. Did he indicate anything, either he or Mr. Robinson, in any of those conversations relating to cost?—A. From time to time Mr. Edlin would say that it is costing him a lot of money and that the cost is eating him up.

Mr. DOUB. What was costing him a lot of money? "It," you said.

Mr. MARION. You may answer the question.

The WITNESS. When the discussion about his friends on the Hill were taking care of the matter for him.

By Mr. MARION:

Q. Did you ever hear Mr. Edlin indicate he was going up on the Hill.—A. Yes, occasionally when I was in Washington, or in Chevy Chase, he would leave, and he would sometimes say he is going over on the Hill, and if anyone wanted him, he could be reached at Congressman Johnson's office.

Q. Now, Mr. Goldman, did there ever come a time when you had an opportunity to meet both Congressman Johnson and Congressman Boykin together?—A. In the summer of 1961, yes.

Q. And where did that meeting take place?—A. At a private dining room at the Congressional Hotel.

Q. Would you relate the circumstances of that particular meeting?—A. I had again been brought up to Washington by

Mr. Edlin. I was told to meet him at Congressman Johnson's office.

[1031] I went there. Mr. Edlin, Mr. Robinson and Congressman Johnson were there, and I was told that we were going to have lunch.

We went to the Congressional Hotel. There was a private dining room in the restaurant, and as we entered, a few minutes later Congressman Boykin walked in and Mr. Edlin and Congressman Boykin and Congressman Johnson were having a quiet conversation over on the side.

Mr. Robinson left the room to get a pack of cigarettes and I sat down at the table. They were conversing for a while when all of sudden in a very, very loud voice Mr. Edlin stated words to the effect, "When am I going to get some results? It has been costing me a lot of money and all I have been getting is a lot of talk. I want results."

With that Congressman Boykin stepped back a step, raised his shoulder and said to Mr. Edlin, "How dare you speak to me like that?"

Mr. Johnson, on the other hand, said to him, "Calm down. Take it easy. You know these things take time."

And with that, Congressman Johnson glanced over to me and then Mr. Edlin looked over to me. Mr. Edlin mumbled something and Congressman Johnson and Mr. Edlin left the room.

Congressman Boykin sat down. I got up. I walked around for a while and then Congressman Boykin asked me for my name. I told him who I was. He asked me if I was associated with Mr. Edlin.

I told him that I worked for him.

Then he asked me to "tell me something about yourself."

I said, "There is nothing to tell."

Shortly thereafter Congressman Johnson and Mr. Edlin walked back into the room and shortly behind them [1032] Mr. Robinson came in holding a pack of cigarettes, opening it up.

* * * * *

Q. Now, directing your attention to the late summer or early fall of 1961, I ask you whether or not you had occasion to be in Mr. Edlin's company at the Silver Fox Restaurant when anything unusual occurred?—A. It was a Saturday afternoon.

Mr. Edlin had taken most of the employees to lunch at the Silver Fox.

Q. What is the Silver Fox?—A. The Silver Fox is a restaurant on Wisconsin Avenue in Washington, just the other side of Chevy Chase.

Q. How close is it to 5410?—A. Approximately two or three blocks.

Q. I see.—A. And as we had come out after lunch, we were walking back towards the office of First Continental Savings and Loan when Mr. Edlin had a sad or peculiar expression on his face. I asked him what was wrong, and at that time he told me that he was concerned with the fact that Congressman Boykin and Congressman Johnson were not getting anywheres with his indictment; that it was costing him a lot of money. When I asked him what he meant by that, he stopped for a minute, looked at me, and said, "Forget it." That was the end of that.

* * * * *

[Testimony of Defense Witnesses:]

Mr. DOUB. Mr. Buarque.

Thereupon MANUEL BUARQUE, a witness, having been first duly sworn, was examined and testified as follows:

The CLERK. State your name for the record.

The WITNESS. Manuel Buarque.

The CLERK. Take the stand, please.

[1033] DIRECT EXAMINATION

By Mr. DOUB:

Q. Mr. Buarque, where do you live?—A. 5800—63rd Avenue, Riverdale, Maryland.

Q. Are you originally from the Eastern Shore?—A. I am legally from Dorchester County, Maryland.

Q. During what period of time were you administrative assistant for Congressman Johnson?—A. From January 7, 1959 until through January 2, 1963.

Q. In other words, you were his administrative assistant during the full four years that he was a member of Congress?—A. Yes, sir.

* * * * *

CROSS EXAMINATION

By Mr. WEINER:

* * * * *

Q. Now, Mr. Buarque, let me ask you one more thing about these. In September and October of 1960 Congressman Johnson was campaigning for reelection, wasn't he?—A. Yes.

Q. And during this time that he was campaigning to be reelected, he would go down to his District to do his campaigning, wouldn't he?—A. Very, very rarely while Congress was in session.

Q. Very, very rarely?—A. While Congress was in session, yes, sir.

Q. How often would you say he went down there?—A. On the weekend if he went at all, during the time Congress was in session.

Q. How many times would you say he went in September and October 1960?—A. After Congress.

[1034] Q. In September and October of 1960, in the two months preceding.—A. In the two months he stayed there quite often in the district, yes.

* * * * *

Q. Now, I believe on your direct examination here today you testified that you first met Mr. Heflin when he and Mr. Robinson had been in Congressman Johnson's inner office, and they came out, and Congressman Johnson at that time introduced you to Mr. Heflin; do you remember that?—A. I recall that.

Q. Do you remember when the FBI interviewed you on January 11th of 1962 and asked you when you first met Mr. Robinson you claimed to them that you did not meet Mr. Robinson until the spring of 1961, some nine months later, when Mr. Robinson had some dealings with some land in Charles County?—A. I don't recall that, sir.

Q. You don't recall that?—A. No, sir, I do not recall that at all.

Q. Do you deny that you told the FBI when they first interviewed you on January 11, 1962, that you had not met Mr. Robinson until the spring after the speech had been delivered?—A. I recall asking if these gentlemen took shorthand, and they denied that they did, and they told me that they didn't feel that their statements were verbatim. I deny that categorically, yes.

Q. You deny telling them that?—A. I deny telling them that, yes.

Q. And do you remember being asked about this when you appeared before the grand jury in April of 1962?—A. About?

Q. About when you first met Mr. Robinson and Mr. Edlin?—A. I probably was asked. I think the whole testimony would have to be divulged all the way through to get the proper perspective on it.

Q. Do you remember telling them that?—A. I don't re- [1035] member what you said. I remember testifying before the grand jury, yes, sir.

Q. Do you remember telling the grand jury at that time that you first met Mr. Robinson and Mr. Edlin, as you did today, in the spring of 1960, in connection with the bridge, but that neither Mr. Robinson nor Mr. Edlin were present in Congressman Johnson's office during the period prior to the speech of Congressman Johnson on June 30, 1960?—A. I don't recall that, sir.

Q. Do you remember this question? Do you remember whether you were asked this question, on pages 13, 14 and 15 of the grand jury transcript:

> Question. When did you first meet Mr. William L. Robinson?
>
> Answer. I met Mr. Robinson and even Mr. Edlin, it (2688) was either the latter part of April or the latter part of March or the first part of April 1960. They came to the office with an attorney in Washington by the name of Marshall Diggs and another one, Taylor Bryant, and I believe it was in connection with the Assateague Bridge. He told the Congressman he was acting as an agent for the Assateague group. He came up in the District and worked with the Congressman on those matters. They were trying to get this group to underwrite a bond of some $6.1 million, as I recall it. I don't know what happened. Anyway, it didn't occur, but that is the first time I met either one of them. It was in connection with the Assateague Bridge plan.
>
> Question. Were they friends of Congressman Johnson's or just close acquaintances?
>
> Answer. Who was that?
>
> Question. Edlin and Robinson.
>
> Answer. That was the first time I had ever seen them.

[1036] Question. How about Congressman Johnson as far as you know?

Answer. I don't know. That is the first time I met them.

Question. Did you introduce them to Congressman Johnson?

Answer. No, they introduced themselves. One said, "I am Mr. Kenneth Edlin," and the other one said, "I am Bill Robinson, from Miami, Florida."

Question. Did they both go into the office?

Answer. They were in with Mr. Marshall Diggs, and Mr. Bryant and another one. I don't know what his name was.

Question. They were discussing the Assateague Bridge?

Answer. That is correct.

Question. When was the next time they came to your office? Did they come to your office prior to the Congressman's speech?

Answer. No, I don't recall them, seeing them in the office prior to the speech.

Do you remember being asked that question and giving that answer to the grand jury on April 25, 1962, Mr. Buarque?—A. I probably was if you say so, counsellor.

Q. What is your recollection? Do you recall giving that answer?—A. I recall the testimony I made this morning, that that was the first time I had met them was over the Assateague Bridge. It was.

Q. Now, you produced a draft, Mr. Buarque, which was marked Defendant Johnson's Exhibit 14. Is this the only draft of the speech that was prepared?—A. By me.

[1037] Q. Was this the only draft of the speech prepared by anyone?—A. I don't know about anyone else. This is what I prepared, sir.

Q. You only prepared one draft?—A. I prepared several initial drafts. That was the final composition, the final form that took place.

Q. This was the last draft?—A. Yes, that was the final form that took place.

Q. This Johnson Exhibit 14 contains two holes at the top. Did you extract it from a file before you produced it?—A. I

have a large file of rough drafts, sir. It was taken out and given to Mr. Doub.

Q. You gave him all of those prior drafts?—A. I have a lot of drafts.

Q. And there were prior drafts of this speech that haven't been produced here today?—A. No, there wasn't because they were more or less scratched out on yellow foolscap paper. It wasn't in continuity at all.

Q. And you threw them out?—A. Oh, yes.

Q. That is the only draft?—A. That is a rough draft of the final speech, yes, sir.

Q. Now, Mr. Buarque, in connection with this speech, how many times did you speak to Mr. Heflin over the telephone about it?—A. Over the telephone maybe three times.

Q. Three times. And how many times did Mr. Heflin come to your office to discuss it?—A. Two or three times.

Q. Two or three visits in the office and two or three times over the telephone?—A. Yes, that is correct.

Q. And did he submit you a draft?—A. Well, if he did, I didn't see it.

Q. Wasn't he working on the speech first and then you worked along with him?—A. No.

[1038] Q. I think you mentioned a Mrs. Frances Kiernan in your direct testimony. Did you see her when she came up here to testify on April 10, 1963?—A. I saw her when she entered the door, yes, sir.

Q. Do you recall ever telling Mrs. Kiernan at the time of the speech, "Mr. Heflin is working on the speech, and I am going to work on it with him?"—A. Well, I consider his work on it the furnishing me with certain statistics and facts, which is permissible. On the Hill all congressional assistants use facts and material from wherever they get it. He furnished these facts, and I incorporated them in the speech.

Q. Do you remember telling Mrs. Kiernan that Mr. Heflin is working on the speech, and I am going to work on it with him?—A. No.

Q. Do you deny telling Mrs. Kiernan that?—A. No, I don't deny telling her anything. I know I constructed the speech and he furnished me the facts, between the two of us. As you say, we made the speech, but as far as him furnishing me a draft, it simply isn't so.

Q. Did you ever give him a draft to take out of the office?—A. I didn't give him any draft.

Q. Did he ever take a draft out of the office?—A. If so, I do not know.

Q. You don't know?—A. If he took one out, I do not know, I said, sir.

Q. Nobody else was making any drafts other than you?—A. He furnished me with the facts. He gave me a list of facts he would like to see me incorporate in it, which I did.

Q. Did he give you a list of facts of things he would like incorporated in the speech before you made your first draft?—A. No, he did not.

Q. He gave it to you as you were making the draft?—A. That is correct.

[1039] Q. Now, can you tell us whether or not at the time the drafts were being made and before the speech was delivered it was contemplated that this speech would be reprinted and Mr. Heflin, after it was made, would then order copies of the reprints?—A. I wasn't advised to that effect.

Q. Now, these notes that you made on the draft, you made them while they were still a draft, didn't you?—A. That is correct.

Q. And do you remember—let me read you this note in the lefthand margin of page 5:

"Mr. Hef. telephoned re caption for reprints and reference to King speech"?—A. Yes, he mentioned in one of the telephone calls that he would like to see the caption changed.

Q. Before the speech was delivered?—A. But I didn't change it before it was delivered.

Q. He talked to you about reprints and the caption for reprints before the speech was delivered?—A. Yes, he said he would like to see the caption changed, but we didn't change it at that time.

Q. You mean you were already discussing the caption for reprints at the time the speech was still in draft form and before it was delivered?—A. I discussed this with him, and I told him I would take it up with the Congressman. We discussed it, and he told me he didn't care what we did.

Q. That was before the speech was delivered?—A. The final speech was delivered on the floor. I discussed it with him. I hadn't yet adopted the caption.

Q. The question is: I will ask it again. The discussion with Mr. Heflin—answer this yes or no, please—the discussion with Mr. Heflin with respect to reprints and the caption for reprints occurred before the speech was delivered?—A. Yes, because I thought they were unimportant. The caption was unimportant.

[1040] Q. Now, in speech you say you make no reference to First Colony, but in the text of the speech you (2695) say, do you not, there are exactly three—I think that is the wording of the speech—exactly three institutions under indictment, but none tried. Is that right?—A. That is correct.

Q. And you did some research into determining which associations were under indictment at the time of that speech?—A. I read newspapers.

Q. Did you go back into newspapers?—A. I read something in the newspapers about it, yes.

Q. Did you do that research yourself or did you have the research arm of the Congress help you with that?—A. I did it myself because I get a daily newspaper.

Q. And you found then that there were exactly three institutions under indictment, is that right?—A. Yes.

Q. And you found as to the status of each of them that none of those cases had gone to trial yet, is that right?—A. Oh, yes, I understand an indictment is not guilt.

Q. And when you found these three indictments, these three cases, you knew them, did you not, that First Colony and Mr. Edlin were under indictment at that time?—A. As I said before, I knew that there was indictments, but that didn't imply guilt as far as I was concerned.

Q. The question is, you knew that Mr. Edlin and First Colony were under indictment at that time?—A. I knew First Colony, but not First Continental.

Q. Did you know that Mr. Edlin was under indictment at that time?—A. I knew that First Colony was under indictment. I didn't know that Mr. Edlin was particularly, no.

Q. You didn't know particularly?—A. No.

Q. What do you mean "you didn't know he was under indictment particularly"?—A. I read in the paper that they alleged.

[1041] Q. They alleged he was under indictment?—A. That he was the head of First Colony.

Q. And that he was under indictment in that case?—A. That is correct.

Q. And when you discussed this proposed speech with the Congressman before it was delivered by him on June 30, 1960, did you tell him that Mr. Edlin and First Colony Savings and Loan Association were under indictment?—A. We never discussed that phase of it at all.

Q. Did you ever during any of these times that you saw Mr. Edlin coming through the office have occasion to inform the Congressman that Mr. Edlin was under indictment?—A. No, I didn't inform him of any matter of that nature.

Q. Kept it all to yourself?—A. I presume it is in the newspaper. He can read as well as I can.

Q. You mean you presumed he knew it?—A. I presume he could read as well as I can, I will put it that way, sir.

Q. And that he knew it?—A. I don't know. I don't know what he knew. I presume he reads the newspaper.

Q. Didn't you think that was a matter that he would be interested in knowing?—A. I don't deal in persumptions. I don't know. I only know what I know.

Q. Now, I believe you testified about this three stage thinking that you all were having about this proposed speech, and that—correct me if I am wrong—it was your testimony that you thought it would be a good thing for the 1960 campaign—that was his current campaign—and would be very important in the 1960 election; is that your testimony?—A. I don't think I said it would be very important. I said it would be helpful to him because it was of statewide nature, and it was Maryland he was talking about.

[1042] Q. And would be helpful to him in his 1960 reelection?—A. That is right.

Q. Where he was running in the First District.—A. That is correct.

Q. On the Eastern Shore?—A. That is right.

Q. You testified he had a weekly newsletter, I believe, that you would prepare for him?—A. That is correct.

Q. Which went out to some 7,000 to 35,000 people.—A. That is correct.

Q. Isn't it true, as a matter of fact, that this speech which was delivered on June 30, 1960, was not written up in this newsletter of the Congressman? Yes or no?—A. Of course not.

Q. And it was never written up in this newsletter which went out to his constituents?—A. That is correct.

Q. And as a matter of fact, before it was delivered, isn't

it true, that you had no complaints at all in your office about this May 27, 1960 article from any of the Congressman's constituents in the First District of Maryland?—A. We didn't have any complaints. We had questions.

Q. From constituents?—A. That is correct.

Q. As a matter of fact, before it was delivered, isn't it true that you had no complaints at all in your office about this May 27, 1960 article from any of the Congressman's constituents in the First District of Maryland?—A. We didn't have any complaints. We had questions.

Q. From constituents?—A. We had questions from constituents. I went down every weekend. We had questions.

Q. Isn't it true that you had no requests from the Eastern Shore to make any speech?—A. We had no request to make a speech, per se, no.

Q. And after the speech was delivered there were no letters of congratulations about this speech that came in [1043] from anybody on the Eastern Shore, isn't that right?—A. I don't recall any letters of congratulations, no.

Q. As a matter of fact, you told the grand jury in April of 1962, didn't you, that the speech was made and it seemed to be forgotten as far as the First District was concerned?—A. That is true.

Q. And it was forgotten by all those constituents who were going to vote for him because this issue that he was going to seize on?—A. That isn't true, because we could use it in the political campaign if we needed to.

Q. And no requests for any reprints came in from any people on the Eastern Shore, did they?—A. I don't recall. I don't recall.

* * * * *

Q. You claimed on direct examination to recall overhearing discussions having to do with a development known as Chesapeake Heights.—A. I referred that back to September 1960.

Q. You heard that discussed?—A. I heard discussions of that nature, and I said there were two or three visits at that time.

Q. In 1961 I believe you said you overheard discussions about a Leisure City?—A. Charles County Land Corporation and Leisure City.

Q. Leisure City many times?—A. Yes, sir.

Q. Isn't it a fact, Mr. Buarque, that when you testified before the grand jury in April of 1962 you said then that the only legal work you knew anything about was the Charles County Land Corporation?—A. I knew the Charles County Land Corportation, yes, definitely, and I also knew Chesapeake Heights. I don't think the question was asked me just what. It referred to this particular Waldorf situation as far as I am concerned.

Q. Do you recall this question and answer on pages 23 and 24 of the grand jury transcript:

> [1044] Question. Did Congressman Johnson ever represent Mr. J. Kenneth Edlin as attorney?
>
> Answer. Not that I know of. He may have done so, but I don't recall any of it. I don't really know. In what capacity do you mean?
>
> Question. As a lawyer doing any legal work for him.
>
> Answer. The only thing I know of, he worked for him on Charles County Land Corporation, as I see it and as I understand it, and I don't know too much about this legal end of it, but he considers himself to be an underwriter.

Do you remember that question and that answer, Mr. Buarque, when you appeared before the grand jury?—A. Oh, yes, definitely, I remember that answer.

Q. And you gave that answer?—A. Oh, sure.

* * * * *

(Thereupon JAMES ASHBY, JR., a witness, having been first duly sworn, was examined and testified as follows:)

DIRECT EXAMINATION

The CLERK. State your name for the record.

The WITNESS. James Ashby, Jr.

The CLERK. Will you spell your last name, please?

The WITNESS. A-s-h-b-y.

The CLERK. Take the stand, please, sir.

By Mr. DOUB:

Q. Mr. Ashby, where do you live?—A. Fredericksburg, Virginia, sir.

[1045] Q. What is your business?—A. I am an attorney.

Q. And you have practiced law in Fredericksburg for how long?—A. Since 1945. I practiced law since 1938 but I spent about five years in the Service.

* * * * *

Q. Now, Mr. Ashby, I would like to direct your attention to May of 1961.—A. Yes, sir.

Q. Will you tell the jury whether you received telephone calls in that month from a Mr. Hollis Rhinehart?—A. I did, sir.

Q. And who was Mr. Rhinehart?—A. Mr. Rhinehart was an attorney from Miami, Florida, who had formerly lived in Charlottesville, Virginia. I believe he was a good many years ago admitted to the Virginia bar but had been practicing in Miami for many years.

Q. Now, what did Mr. Rhinehart telephone you about?—A. He telephoned me with regard to the possible examination of title or abstract of title to a property generally known as Crows Nest. It is more than just Crows Nest but it was referred to as that in our area, consisting of about 4,600 acres.

Q. 4,600 acres of land?—A. Yes, sir.

Q. Is that near Brooke, Virginia?—A. Yes. And it borders on Accoceek Creek and Potomac Creek.

Q. Now, what did Mr. Rhinehart ask that you do?—A. First, to arrange or asked me if I were in a position to perform this service. He was under the impression that I had previously abstracted title to this property. I informed him that I had not but that Mr. Wilson Ingram of Roanoke had previously done it up to, I believe, 1953 or 1954. 1953 or 1954. And that I would be in a position to work on the matter if it were desired with Mr. Ingram. At the same time——

Q. Wait. Did you suggest that Mr. Ingram from Roanoke be brought into the matter to help you or did Mr. [1046] Rhinehart suggest it?—A. I suggested it and I also suggested that Mr. J. M. H. Willis, of Fredericksburg be brought in because he had previously abstracted the title for Equitable Life Insurance, I believe, for a parcel of 620 acres which was in addition to the other tracts in Crows Nest and I think, also his abstract would run up to around 1953 or 1954.

Q. What else did Mr. Rhinehart tell you on the telephone on that occasion?—A. Well, on that occasion I believe he asked me to determine just exactly what would be done, would have

to be done, how soon it could be done and to advise Congressman Johnson as to the possible cost and the length of time that it would take.

Q. I show you what purports to be a copy of a letter dated May 18, 1961 from you to Thomas F. Johnson with a copy to Mr. Hollis Rhinehart, and ask you what that is.—A. That is a letter that was written in response to the original telephone call following a conference with Mr. Rhinehart and Mr. Caudle at which time I first learned that the loan was for, or to be for $850,000, that title insurance would be required, and that I put the First Continental Savings and Loan Association, Inc., in it. I assume I learned at that time that was to be the lending institution.

* * * * *

Q. Now, you also state here in your letter on the second page to Mr. Johnson:

> It is my understanding that you will consider the foregoing and confirm the fee arrangement and authorize me to have each interested attorney proceed.

Did Mr. Johnson confirm this arrangement with you as outlined in your letter?—A. Yes, sir.

Q. He did. And before he confirmed it to you, did you do any real legal work on this matter?—A. No, sir, the only thing that was done, I assumed that the confirmation was going to be received and the only thing that was done, I called Mr. Ingram, I believe and sent him—I believe [1047] I called him and suggested that he get his papers in order so that we could proceed promptly because at that time it was a desire for speed in getting the matter concluded.

* * * * *

Q. Now, do you recall a meeting on June 9, 1961?—A. Yes, sir.

Q. And was that meeting in Fredericksburg and with whom was it?—A. That meeting was in Fredericksburg and it was with Congressman Johnson, Congressman Boykin and Mr. Robinson.

Q. And what was the subject of discussion with them?—A. Well, I think, at that meeting we discussed generally the question of getting the perimeter survey and I have some notes on the conference; I could go over them in detail, if you would

let me have them. Some 7 or 8 matters that were discussed during the course of that meeting.

* * * * *

CROSS EXAMINATION

By Mr. MARION:

Q. Mr. Ashby, as I understand your testimony, you were originally contacted in this matter by Hollis Rhinehart who was an attorney in Miami, Florida, is that correct?—A. That is correct.

Q. And you had known Mr. Rhinehart for some time prior to that, had you not?—A. Yes, sir, for many years.

Q. And at that time did you know Congressman Johnson?—A. I knew of Congressman Johnson but I do not believe I had met him as of that time.

Q. And it was Mr. Rinehart, was it not, who asked you to undertake the title work in connection with the tracts of land at Brooke, Virginia?—A. It was Mr. Rinehart who discussed the matter with me but he did not ask me to un-[1048]dertake it, the approval of the undertaking was left to Congressman Johnson.

Q. Was there mention of Congressman Johnson at the time you were first contacted by Mr. Rhinehart?—A. The first time he contacted me was by telephone.

Q. Who contacted you? Mr. Rhinehart?—A. Mr. Rhinehart. The second time at the conference with Mr. Rhinehart and Mr. Caudle, I was directed to communicate with Congressman Johnson and that brought about the letter of May 18 which is in evidence.

Q. You were directed to communicate about the amount of your fee with Congressman Johnson, is that correct?—A. And other matters that were related in that letter.

Q. And you did write to Congressman Johnson, according to the letter which is in evidence, on May 18 after meeting with Mr. Rhinehart and Mr. Caudle?—A. Yes, sir.

Q. And did Congressman Johnson immediately reply to that letter of May 18?—A. No, sir, I think not.

Q. You did receive a letter from him, did you not, dated June 1, 1961 which was not introduced into evidence by the defense?—A. I think I did.

Q. Do you have that with you?—A. I think it is in the court room but I do not believe I have it in my file. Let me see.

Q. I will show you a copy of it and perhaps—can we have the original? Who would have it, Mr. Ashby?—A. Let me see if I have it, first. I believe Mr. Doub has that letter from my files.

Mr. DOUB. What is the date of it?

The WITNESS. The letter of June 1 from Congressman Johnson.

Mr. MARION. Is this the letter you received from Congressman Johnson dated June 1, 1961?—A. It is.

[1049] Mr. MARION. We offer this in evidence.

The CLERK. Government exhibit 156 marked in evidence.

[Government exhibit 156 marked in evidence.]

The COURT. Is there any objection?

By Mr. MARION:

Q. Mr. Ashby, to the best of your recollection, is this the first communication you had in this matter from Mr. Johnson either written or oral?—A. Yes, I think that is.

Mr. MARION. Members of the Jury, this is a letter dated June 1, 1961 on the letterhead of the Congress of the United States, House of Representatives, Washington, D.C., addressed to James Ashby, Jr., Esq., Post Office Box 358, Fredericksburg, Virginia.

> Dear Mr. ASHBY:
>
> My apologies for the delay in answering your letter of May 18, 1961.
>
> Yesterday I talked with Mr. Hollis Rhinehart who is to be in touch with you within the next few days. Mr. Rhinehart is authorized to direct the legal work to be done in this matter. I may add that the composite plat embodying all of the land in question is most urgent and I do hope that same may be made available at the earliest possible date.
>
> With kind personal regards, I am
>
> Sincerely yours,
>
> (S) THOMAS F. JOHNSON,
>
> *Member of Congress.*

And there is a notation in a different type at the bottom which indicates, does it not, Mr. Ashby, that you sent [1050] copies of that letter from your office to the lawyers who were working with you on the matter?

The WITNESS. Yes, sir.

By Mr. MARION:

Q. And then, if I understand your testimony on direct, Mr. Ashby, you believe that you received a telephone call from Congressman Johnson after that letter but before June 9, setting up the meeting of June 9?—A. I think that is correct. I may have received more than one but I believe it was Congressman Johnson who set up the meeting of June 9.

Q. And that was the only meeting you had with Congressman Johnson between the first of May, 1961 and the end of the year, 1961?—A. That is correct.

Q. Now, Mr. Ashby, although your letter to Congressman Johnson of May 18 mentions what the fee would be when the work is completed, so far there has been introduced, as I understand it, no letter which indicates that you actually billed anyone for your services, is that correct?—A. I do not believe there is any letter in evidence.

Q. You did send a bill for the services which you had rendered, did you not?—A. Naturally.

Q. And that letter was sent on July 5, 1961, was it not?—A. I think so and when the interim binder went forward.

Q. And that was sent to Congressman Johnson, was it?—A. Yes, sir.

Q. Do you have your office carbon of that letter?—A. Mr. Doub, I believe, has the letter of July 5, copy of the letter from my office to the Congressman's office.

Mr. DOUB. No, I do not have it.

Mr. MARION. It is a carbon copy.

The WITNESS. I stand corrected, sir. I have it.

[1051] By Mr. MARION:

Q. And is that the letter which enclosed a bill in the amount of $4,400.00?—A. A bill for $4,400 was enclosed as well as a statement from Lawyers Title Insurance Corporation to cover the interim binder and final mortgage policy.

Q. And the original of that letter was sent by you to Congressman Johnson?—A. Yes, sir.

* * * * *

The CLERK. Government exhibit 157 marked in evidence.

[Government exhibit 157 marked in evidence.]

Mr. MARION. Members of the Jury, this is a carbon copy of a letter dated July 5, 1961, addressed to the Honorable Thomas F. Johnson, Room 141 Old House Office Building, Washington, D.C.

DEAR CONGRESSMAN JOHNSON:

We have now received and I enclose herewith interim title insurance covering 8 parcels of land with the descriptions thereof as they should be inserted in deed from Tensaw Land and Timber Company, Incorporated to Leisure City Land Corporation.

The parcel to be conveyed by Brown is not included in this interim binder because there was no deed of record to Tensaw Land and Timber Company, Incorporated, at the time of my abstract of the first seven parcels, and it is my impression that at our conference in Fredericksburg, it was determined that I should not hold up the work on these parcels to add the Brown property to the abstract.

I was to have been forwarded a copy of the American Asphalt Company contract, which was never received, and I would like to have this in order that the final title certificate may recite it.

[1052] Our statement for services is enclosed herewith, as well as a statement from Lawyers Title Insurance Corporation to cover the interim binder and the final mortgage policy.

My purpose in forwarding the original of the title binder to you at this time is to furnish you the guide for proper descriptions of the eight parcels of land.

It will be noted that a 5.148 acre tract is excepted under tract 8, schedule A, because of the poor description of this parcel. If this becomes of serious importance to the lender, it will be necessary that Mr. Willis abstract the title to the property adjoining this parcel of 5.148 acres in order to establish boundary lines.

As soon as I hear from you, I will proceed in accordance with your schedule to notify the tenants upon the premises of the sale and advise them to leave the premises. I will have these notices delivered by Mr. Kendall so that he can explain to each tenant so that they will in the future be the tenants of Leisure City Land Corporation.

I am forwarding a copy of this letter to Congressman Boykin and to Messers. Ingram and Willis.

I am pleased to report to you that the perimeter plat is now being prepared in an appropriate size and form

as per instructions received by Mr. Ingram and will include the Brown, as well as the Temptation Farm tract. However, the 5.148 acres will not appear on it because of the indefinite description.

I shall await your further advice in this matter.

Carbon copy to Honorable Frank W. Boykin, Mr. J. Wilson Ingram, and Mr. J. M. H. Willis.

Q. As I understand, Mr. Ashby, your bill in the amount of $4,400 was forwarded to Congressman Johnson as an enclosure to this letter?—A. Yes, sir.

Q. There is some reference in here to the Asphalt Company contract. This had been discussed, I think you indi-[1053] cated on direct examination, at the meeting of June 9, is that correct?—A. That is correct.

Q. And you requested a copy of that contract at that time?—A. That is correct.

Q. And you had not received one as of July 5, 1961?—A. I had not.

Q. Did you receive one from Congressman Johnson thereafter?—A. No, sir.

Q. Did you receive one from anyone?—A. As far as I know, I never received one.

Q. There is also some indication in this letter there as to notification of tenants. Had that been discussed at the June 9th meeting with Congressman Johnson?—A. Yes, sir.

Q. And had he sent you what information you wanted at the time you wrote this July 5th letter?—A. No, sir, I had not received the information but I was in a position to get the names of the tenants. The question was instructions as to when they should be notified.

Q. And were you instructed by Congressman Johnson as to when they should be notified?—A. I was never instructed to notify the tenants other than the discussion of the 9th of June.

Q. After you sent that bill, with your letter of July 5, you were not paid until a letter dated December 28 arrived in your office, is that correct?—A. That is correct.

* * * * *

Q. As I understand your letter of July 5, 1961, you furnished the appropriate descriptions which were to be used in a deed from Tensaw Land and Timber Company to Leisure City Land Company, is that correct, in your letter of July 5?—A. I think that is correct, sir.

Q. And did you know at that time that the property had already been deeded to Leisure City Land Corporation?—A. I did not.

[1054] Q. And was it brought to your attention at the time of the recordation of those instruments at Stafford County in July that they, in fact, had been recorded in July of 1961?—A. It came to my attention. It was not brought to my attention by anyone.

Q. Congressman Johnson never advised you of the recordation of those instruments?—A. No, sir, I advised him.

Q. As a matter of fact, you found out yourself when you happened to be up in the court house in Stafford, did you not, on another matter and happened to have ascertained that those instruments had been recorded?—A. That is correct, and I advised Congressman Johnson of the fact.

Q. And that is your letter of August 23, is it not?—A. Yes, sir.

* * * * *

Mr. MARION. Government exhibit 158 is a carbon copy of a letter from Mr. Ashby to the Honorable Thomas F. Johnson, Room 141, Old House Office Building, Washington, D.C., dated August 23, 1961.

DEAR CONGRESSMAN JOHNSON:

Somewhat to my surprise, I find that on August 18 the following instruments all dated April 29, 1961, were recorded in the clerk's office of the Circuit Court at Stafford.

No. 1. Deed conveying the 8 parcels set out in interim binder, obtained by the undersigned, J. M. H. Willis, Esq., of this city and J. Wilson Ingram, Esq., of Roanoke, Virginia; said binder running to First Continental Savings and Loan Association, Inc., and being dated June 30, 1961;

No. 2. Deed of trust from Leisure City Land Corporation to F. P. Moncure and Clay Kendall Trustees (does not list the addresses in Virginia of the trustees named nor recite that they are residents of Virginia); secures one note in the sum of $2,875,000 payable to Tensaw Land and Timber Corporation, as Instrument No. 1086, recorded at 1:20 p.m. on August 18, 1961;

[1055] No. 3. Deed of Trust, Leisure City Land (2830) Corporation to Clay G. Kendall, of Stafford, Vir-

ginia, securing one note dated April 29, 1961 in the sum of $843,750 payable to First Continental Savings and Loan Association Inc., as Instrument No. 1087 at 1:35 p.m. on August 18, 1961.

At this writing, we have not been furnished with copies of the instruments recorded, nor would we have been informed of their having been recorded had I not observed same through the daily index at Stafford while in the Clerk's office on the morning of August 21st.

I have written to Mr. Lykes Boykin to request copies of these instruments but at this writing I have not had any response to my letter of August 21 addressed to him.

In order that this matter may be properly concluded and Lawyers title policy procured as per your request and authorization, it will be deeply appreciated if you will have the originals of all instruments forwarded to the undersigned, or photostatic copies of same forwarded at your early convenience.

I observed in the above referenced deed from Tensaw Land and Timber Corporation to Leisure City Land Corporation that the following reservation was contained:

"This conveyance is made subject to conditions, restrictions and right of way contained in deeds forming the chain of title to this property and is also subject to existing tenancies, whether of record or not."

"With respect to this latter reservation underlined by me, I have not as yet been given the names of the tenants to whom you directed that protective notices be forwarded at our conference on June 9, 1961, but will again request these from Mr. Kendall.

I am also still awaiting a copy of the contract between Tensaw Land and Timber Corporation and American Asphalt Company, to which reference was made at our conference of the above date.

[1056] I am sure that this letter reaches you at a time when you are extremely busy with your duties in Congress, but trust that you will be in a position to have someone supply the requested copies of instruments.

With kindest regard and best wishes, I am

Sincerely,

JAMES ASHBY, Jr.

Copies to J. M. H. Willis, Esq., J. Wilson Ingram, Esq. And the post script:

> Since the above letter was dictated, I have received a telephone call from Mr. Lykes Boykin, and he advised that in the near future, he will forward to me copies of the instruments numbered 1, 2 and 3 above. It is suggested that you have forwarded to me a copy of the American Asphalt contract at an early date:

By Mr. MARION:

Q. Now, Mr. Ashby, did you receive a letter in reply to that from Congressman Johnson?—A. I do not believe I did, sir.

Q. Then at the end of September, Mr. Ingram advised Congressman Johnson, did he not, by letter, copy of which was sent to you, of the correction as to that 5.148 acre tract as a result of your obtaining the old plat?—A. Yes, September 28.

Q. And you subsequently received a copy of Congressman Johnson's answer to that letter, did you not, the original of which was addressed to Mr. Ingram in Roanoke, Mr. Ingram sending you a photostatic copy of the original?—A. Yes, sir.

Mr. MARION: Are they marked?

The COURT. Yes, the September 28 is 159.; the 10th of October is 160.

[1057] Mr. MARION. Letter of September 28, 1961, members of the jury, is a carbon copy of a letter from J. Wilson Ingram to the Honorable Thomas F. Johnson, Room 141 Old House Office Building, dictated September 28, 1961. This is a carbon copy to James Ashby, Jr., Esq. Four other carbon copies are indicated.

DEAR CONGRESSMAN JOHNSON:

> I am in receipt of Lawyers Title Insurance Corporation endorsement eliminating from their interim binder Item 9, section 2, schedule B. Will you please see that this endorsement is attached to the original binder, which I believe is in the hands of First Continental Savings and Loan Association, Inc.
>
> I presume you have now received the composite maps recently corrected to show the 5.148 acre tract. With the elimination of the title company's exception to the 5.148 acre tract, it would appear that this matter should be concluded at an early date. I am certain that my associate attorneys will join me in appreciating a status

report on this matter and some suggestion as to when we can expect to secure the final title policy. Please let me have a response to these inquiries at your earliest opportunity.

I know you are delighted to have a long hard session of Congress come to an end. There have been many disappointments, I'm sure, not only to you but to most of the citizens, but I feel that the accomplishments of this session greatly exceed its disappointments. I appreciate your good work in aiding in the expeditious handling of our legislative program.

Looking forward to an early reply and with kindest personal regards, I remain

Very truly yours,

(S) J. WILSON INGRAM.

And with copies to The Honorable Frank W. Boykin, The First Continental Savings and Loan Association, [1058] James Ashby, Jr., Esq.; J. M. H. Willis, Esq.; Lykes Boykin, Esq.

And the answer to that dated October 10, 1961, from Congressman Johnson on stationery of the Congress of the United States.

J. Wilson Ingram, Esq.,
Shenandoah Building,
Roanoke, Virginia.

DEAR MR. INGRAM:

My apologies for the delay in answering your last letter. With the adjournment of Congress and the pressure from the District there has been little opportunity for legal affairs. I am happy, however, to note that Lawyers Title has issued an endorsement eliminating from their interim binder Item 9, Section 2, Schedule B. This endorsement has been attached and same delivered to the Savings and Loan Association.

I am anxious to know if any fee remains unpaid covering legal or surveying services. If there are any funds due, please advise and I will communicate with clients.

I am most appreciate of your favorable expressions covering legislation during the past session.

With kindest regards, I am

Sincerely yours,

THOMAS F. JOHNSON, M.C.

By Mr. MARION:

Q. Now, after October 10, Mr. Ashby, you did not receive, did you, the fee which you had previously billed for, immediately?—A. No.

Q. And there were further letters written, were there not, on November 16 and November 17, 1961, the first being a letter of Mr. Ingram to Congressman Johnson, and the [1059] second being your letter to Congressman Johnson?—A. That is correct, sir.

Q. And do you have carbon copies of those letters?—A. I do.

The COURT. Are there going to be any others, Mr. Marion?

Mr. MARION. I think it might be helpful to have the envelope in which that December 28, 1961 letter arrived in your office, Mr. Ashby, if you have that.

The WITNESS. I think that Mr. Doub has that, sir.

The COURT. Mr. Doub?

Mr. DOUB. Sir.

Mr. TYDINGS. The envelope of the December 28th letter. Do you have the envelope? We wish to offer it into evidence.

Mr. DOUB. Do you have that?

Mr. JOHNSON. No.

The COURT. The witness said he gave it to you.

Mr. MARION. The envelope you kept attached to the letter, Mr. Ashby, for your tax records.

The WITNESS. Yes, sir.

By Mr. MARION:

Q. Since the letter purports it is being mailed to you so you can record it in 1961.—A. Yes.

Q. Whereas the letter did not reach your office until January 9, 1962, is that correct?—A. About that date.

Q. Postmarked January 8, 1962 in Baltimore, Maryland, is that correct?—A. I would have to look at the envelope in order to refresh my memory on that. It is approximately correct. [1060] The COURT. Well, if you have a photostat and Mr. Doub cannot find the original, use the photostat.

* * * * *

Mr. MARION. If Your Honor please, I offer the letter of November 16, 1961 from Mr. Ingram to Congressman Johnson and the letter of November 17, 1961 to Mr. Ashby from Congressman Johnson.

The CLERK. Letter dated November 16, 1961, Government exhibit 161 marked in evidence.

Letter dated November 17, 1961 Government exhibit 162 marked in evidence.

[Government exhibits 161 and 162 were received in evidence.]

Mr. MARION. Members of the Jury, Government Exhibit 161 is a carbon copy of letter from Mr. Ingram to Congressman Johnson, November 16, 1961.

DEAR CONGRESSMAN JOHNSON:

On October 12, 1961 I addressed a letter to you requesting that you communicate with our clients and arrange to have our work for the above-referenced corporation concluded. To date so far as I am advised, neither of my associate counsel nor I have received any information about the matter. We are very much concerned about its status, and for that reason, I am writing to request that you make an inquiry in our behalf and let me know when we can expect to conclude our services.

I trust I will receive an early reply.

With kindest personal regards, I remain

Very truly yours,

J. WILSON INGRAM.

Carbon Copy J. M. H. Willis, Esq.; James Ashby, Jr., Esq.

[1061] And the letter of November 17, 1961, Government Exhibit 162, carbon copy of letter to the Honorable Thomas F. Johnson, Room 141, Old House Office Building, Washington, D.C.

Re: Leisure City Land Corporation.

DEAR CONGRESSMAN JOHNSON:

It will be deeply appreciated if you will accomplish the request of my associate, J. Wilson Ingram, Esquire, so that we can properly conclude our services in the above matter.

Your early advice is awaited.

With kind personal regards, I am

Sincerely,

JAMES ASHBY, Jr.

Carbon Copy: J. Wilson Ingram, Esq.; J. M. H. Willis, Esq.

Q. Mr. Ashby, this is a letter of October 12th, a copy of which you received, the original of which apparently went to Congressman Johnson, from Mr. Ingram?—A. Yes, sir.

Mr. MARION. I offer the letter of October 12, 1961, and also the copy of the letter of December 27, 1961.

The CLERK. Letter dated October 12, 1961, Government's Exhibit 163 marked in evidence.

[Government's Exhibit 163 was received in evidence.]

The CLERK. Letter dated December 27, 1961, Government's Exhibit 164 marked in evidence.

[Government's Exhibit 164 was received in evidence.]

Mr. MARION. Members of the Jury, the letter of October 12, 1961, is a carbon copy to Mr. Ashby of a let-[1062]ter from J. Wilson Ingram, to the Honorable Thomas F. Johnson.

Re: Leisure City Land Corporation.

DEAR CONGRESSMAN JOHNSON:

Thank you for your letter of October 10, 1961.

Please be advised that the surveyor has been fully paid for all services rendered.

So far as I am advised, no fee has been paid for any legal services rendered to date. Associate counsel and myself would like to conclude this matter at the earliest opportunity. The only thing remaining now is to obtain the title insurance policy. The security instrument has been recorded. We are awaiting instructions to wind up this matter. I will appreciate your communicating with our clients and arranging to have this work concluded as soon as possible.

Thank you for your cooperation in this matter. I trust you or one of our clients will communicate either with associate counsel or with me in the very near future.

With very kindest regards, I remain

Very truly yours,

J. WILSON INGRAM.

cc: J. M. H. Willis, Esq.; James Ashby, Jr., Esq.

Next is a carbon copy of the letter of December 27, 1961, which is from Goolrick, Ashby & Whitticar, to First Continental Savings and Loan Association, Inc., 5410 Wisconsin Avenue, Chevy Chase, Maryland. Attention: Mr. Robinson.

Re: Leisure City Land Corporation

GENTLEMEN:

On July 5, 1961, the undersigned, in cooperation with Mr. J. Wilson Ingram, of Roanoke, and Mr. J. M. H. Willis, [1063] of this city, completed examination of title and the securing of interim binder upon some eight tracts of land in Aquia Magisterial District, Stafford County, Virginia, running to your corporation, and transmitted said interim title insurance binder to Congressman Johnson. At this time, a statement for services in accordance with prior agreement was submitted by this firm on behalf of the undersigned and the two cooperating attorneys, in the sum of $4,400.00. A photo copy of this bill, which was rendered to Leisure City Land Corporation, is enclosed, which said corporation executed a mortgage securing payment of a loan to your corporation in accordance with said interim binder, and that instrument has been duly recorded in the Clerk's Office of the Circuit Court of Stafford County, Virginia. portion of the land, the subject of said interim title Because of an exception regarding the 5.148 acre binder, there was secured and forwarded through Congressman Johnson a letter obtained from Lawyers Title Insurance Corporation of September 27, 1961, eliminating the exceptioncontaine d in Item 9, Section 2, Schedule B of the interim binder.

The undersigned and our cooperating counsel will appreciate your having the statement of July 5, 1961 promptly and duly paid.

Very truly yours,

GOOLRICK, ASHBY & WHITTICAR.

CC: Honorable Thomas F. Johnson, Honorable Frank W. Boykin, Mr. J. Wilson Ingram, Mr. J. M. H. Willis.

By Mr. MARION:

Q. Then I think you testified thereafter, Mr. Ashby, that you received the letter of December 28, 1961, enclosing [1064] the check in the amount of $4,400, is that correct?—A. Yes, sir.

Q. And that was received in your office on January 9, 1962?—A. I think that is correct, sir.

Q. And I think you have identified the photostatic copy of the envelope in which that letter came to you, is that correct?—A. That is correct.

Mr. MARION. We will offer this in evidence, if Your Honor please.

The CLERK. Government's Exhibit 165 marked in evidence.

[Government's Exhibit 165 was received in evidence.]

Mr. MARION. Members of the Jury, this is a photostatic copy of an envelope which bears the return address, "Congress of the United States, House of Representatives, Official Business—Free," but has a stamp in the upper right-hand corner over the printed signature of Thomas F. Johnson. It is addressed to Goolrick, Ashby and Whitticar, Attorneys at Law, Fredericksburg, Virginia. It is postmarked at Baltimore, Maryland at 11:30 a.m., January 8, 1962.

By Mr. MARION:

Q. I show you, Mr. Ashby, Defendant Johnson's Exhibit No. 3 for identification. Can you identify that?—A. Yes, sir, that is the check that was received with the letter in the envelope to which reference has just been made.

Q. This check came to you from Congressman Johnson, is that correct?—A. Yes.

* * * * *

Mr. MARION. Members of the Jury, Defendant Johnson's Exhibit No. 3 is a check drawn on the Exchange and Savings Bank of Berlin, Maryland, dated December 28, 1961, pay to the order of Goolrick, Ashby and Whitticar, for $4,400, signed Thomas F. Johnson, Special Account No. 1.

[1065] The lower lefthand corner bears the words "Attorneys' Fees and Costs for Lawyers, Title policy, Re: Leisure City Land Corporation."

And on the reverse side it bears the stamp: "For deposit only Goolrick, Ashby and Whitticar, Attorneys at Law," and the words "Prof. Account." A. Professional Account.

Q. Although the check indicates, Mr. Ashby, that not only attorneys' fees but costs were also paid by that check, is it not a fact that the costs which had been incurred were not paid?—A. That is correct.

Q. And you and your associate counsel bore the expense of absorbing the costs which amounted to some $4.50, is that not so?—A. I think that is correct, and, of course, the Lawyers Title premium was not absorbed, and I don't know what it was.

Q. Do you know whether or not Lawyers Title was paid their $1,450?—A. I do not know.

Q. I have here a letter of January 9th. Is that a letter which you addressed to Congressman Johnson upon receipt of that check?—A. That is correct, sir.

Mr. MARION. May I offer this in evidence.

The CLERK. Government's Exhibit No. 166 marked in evidence.

[Government's Exhibit No. 166 was received in evidence.]

Mr. MARION. Members of the Jury, Government's Exhibit 166 is a letter on the letterhead of Goolrick, Ashby and Whitticar, Attorneys at Law, Fredericksburg, Virginia. It is dated January 9, 1962.

Honorable THOMAS F. JOHNSON,
Room 141, Old House Office Building,
Washington, D.C.
Re: Leisure City Land Corporation

[1066] DEAR CONGRESSMAN JOHNSON:

I wish to acknowledge and thank you for your check in the sum of $4,400.00 dated December 28, 1961 which reached my office this morning.

While this makes it impossible for us to enter the fee in 1961, your thoughtfulness is nevertheless appreciated.

With kindest personal regards and best wishes for the New Year, I am

Sincerely,

JAMES ASHBY, Jr.

* * * * *

Q. Mr. Ashby, was the letter which you received on January 9, 1962, although dated December 28, 1961, the only letter which you received which was on the letterhead of Johnson & Johnson, Snow Hill, Maryland, from Congressman Johnson, to the best of your recollection?—A. To the best of my recollection it was, but I wouldn't be positive.

* * * * *

Q. Mr. Ashby, there has been introduced in evidence the letter which you wrote to Congressman Johnson on July 5, 1961, where you enclosed your bill in the sum of $4,400. Did you also mention certain other problems to Congressman Johnson in the course of that letter?—A. Yes, sir, I think so.

* * * * *

Q. Did you receive any communication from Lykes Boykin after that relative to any of the problems which you had mentioned in your July 5th letter? Maybe I had better let you see the letter and read it over.—A. I don't know whether I received the letter from Mr. Lykes Boykin or whether it was a telephone call, but I know that following [1067] this letter of July 5th there were several communications either by telephone or letter concerning the 5.148 acre parcel, and Mr. Lykes Boykin was very much interested in determining how much this survey would cost.

I think he made that request to me by telephone and not by letter. That I have discussed the matter with the engineer, and I believe the engineer had written him and sent me a copy of the letter in which he had given a figure of approximately $500 or $600, I forget now, and he preferred to have it not to exceed a certain amount, and he had called me and spoke to the engineer either by telephone in the office and told him what was desired, and he wrote another letter to Mr. Lykes Boykin advising him that the cost of conducting such a survey and furnishing the plat would not exceed $600.

Q. And you were in contact either by letter—you and your associates—either by letter or by telephone with Mr. Lykes Boykin during this period in July, August and September of 1961, were you not?—A. Yes, sir, because the perimeter survey problem was one that was definitely his. I also communicated with him after I discovered that the documents had gone to record.

Q. Isn't it a fact also, Mr. Ashby, that after you received the letter of June 13, 1961, the week after your Friday conference with Congressman Johnson, Congressman Boykin, and Mr. Robinson, after you received that letter of June 13th, that you had no communication with Congressman Johnson until you received the letter and the check in January of 1962?

* * * * *

Mr. MARION. My question to the witness, Your Honor, is whether he was contacted in any way by Congressman Johnson during the period after you received the June 13th letter until you received the check January of 1962?

The WITNESS. Well, by Congressman Johnson?

[1068] By Mr. MARION:

Q. Yes, by Congressman Johnson.—A. Simply by receiving copies of letter that had been sent by him to Mr. Ingram, one

or more, I don't recall now, because my file is becoming rather impossible to answer questions of this kind from because I don't have the letters in it anymore.

Q. The letter in evidence of October 10, 1961, from Mr. Ingram, you did not receive a copy of that letter from Congressman Johnson, did you?—A. No, Mr. Ingram sent it.

Q. Mr. Ingram sent you a photostat of the original that he received, is that correct?—A. That is correct.

Q. Aside from that letter did you receive any direct letters from Congressman Johnson to you during the period I have mentioned?—A. If I did, I don't recall it.

Q. And did you receive any telephone calls from Congressman Johnson during that period, to the best of your recollection?—A. From?

Q. From Congressman Johnson to you.—A. From what date, sir?

Q. From June 13, 1961 until you received the check in January of 1962?—A. To the best of my recollection, I did not, but I wouldn't be sure. I didn't keep a record of all telephone calls of this matter.

Q. I understand that, and is it not also a fact, Mr. Ashby, that you and your associates, Mr. Ingram and Mr. Willis in Fredericksburg performed the title search, the work in connection with the search of the title and the abstracting of the title, so that Lawyers Title could issue its policy of insurance?—A. Yes, sir.

Q. And to the best of your knowledge, your personal knowledge, Mr. Ashby, is it not a fact that Congressman Johnson performed no actual legal work in connection with this work which you and Mr. Ingram and Mr. Willis were [1069] doing?—A. Well, now, that is difficult to answer, Mr. Marion, because he directed in the conference of June 9th the work that was to be done concerning this matter, and his directions were as to what was to be done about the title and what was to be done about the perimeter survey, and certainly that would be a legal service.

Q. My question is, to your knowledge did he actually himself perform any legal work, to your knowledge, in connection with this title work?—A. Of course, not. He obtained our services to do the abstract.

Q. One other thing, Mr. Ashby, you say that Congressman

Johnson authorized your fee of $4,400 at the meeting of June 9, 1961?—A. That is correct, sir.

Q. Did he at any time before that or after that attempt to negotiate with you about reducing the fee or about your sending him a forwarding fee of any sort?—A. No, sir. There was no question about any forwarding fee. I would not answer that Congressman Johnson at any time questioned the fee insofar as my personal knowledge is concerned.

Q. In other words, he authorized the fee in the amount of $4,400 on June 9th?—A. He authorized under the terms of my letter of May 18th the work to proceed, and that had in it the fee, the title insurance, the cost of binder and everything else.

I think the only difference at that conference, as I recall it, I think he had my letter of May 18th, and I think he had some notations that he made on it, had made on it or made on it while we were talking, and one of those was, reduction of the amount of loan from $850,000 to some other lower figure. I have forgotten what it was, but I think it is exactly——

Q. $843,000?—A. $843,000 to $700,000 something.

Q. It was at that meeting that he authorized you to proceed on the fee of $4,400?—A. That is correct.

[1070] Q. At no time did he question that fee or suggest another amount in any respect?—A. I don't know whether he ever questioned it, but not to me.

Q. Not to you?—A. Right.

Q. One final thing, Mr. Ashby, is it my understanding now that the only time in 1961 when you saw Congressman Johnson was June 9th, when he was present in Fredericksburg with Congressman Boykin and Mr. Robinson?—A. To the best of my knowledge. To the best of my recollection, that is correct. I may have seen him on one other occasion, but I don't think that he was going to discuss this particular problem. It was simply in passing.

Q. The only time that you saw him in 1961 in connection with this work which you were performing in Virginia was on June 9, 1961?—A. That is correct.

* * * * *

Thereupon RUDOLPH CARRICO, a witness, having been previously sworn, resumed his testimony further as follows:

CROSS EXAMINATION (RESUMED)

* * * * *

CROSS EXAMINATION

By Mr. Tydings:

Q. All right, Mr. Carrico, when you were contacted by Congressman Johnson initially to handle this foreclosure work, you agreed with him at that time what your foreclosure fee would be, did you not, and wasn't that fee agreed upon as $1,500?—A. Starting from that time. That is in that telephone conversation which is the first knowledge that I had in reference to foreclosure of the Linda City property. I could not say for certainty as to whether that $1,500 was discussed in that telephone conversation. In thinking about it for the last two or three days, I believe it was the time when I went to Washington. I am not positive as to the exact date.

[1071] Q. Well, sometime before you filed the papers in the proceeding the foreclosure fee, your fee was agreed upon as $1,500, is that not correct?—A. I could not say that as a fact. In other words, I cannot say it was prior to the institution of the proceedings.

Q. Well, was it agreed upon sometime during the filing of the proceedings?—A. Sometime during the proceedings but whether it was agreed upon before July 5, which was the date that I instituted the suit or prior to June 15, which was the first week that the property was advertised, I cannot positively say.

Q. But it was agreed upon that $1,500 was to be your fee for handling the foreclosure proceedings?—A. Yes.

Q. You discussed some meetings with Judge Digges in connection with the reduction of the bond premium?—A. Yes, sir.

Q. Congressman Johnson was present at none of the meetings with Judge Digges, was he?—A. No, he was not.

Q. You handled all of the meetings and all of the work before Judge Digges, yourself, did you not?—A. That is correct.

Q. In connection with the reduction?—A. Yes.

Q. As a matter of fact, during the entire time you handled this foreclosure proceeding, to the best of your recollection, Congressman Johnson never even came to La Plata, did he?—A. Not to my knowledge, no.

Q. And the only time you saw him personally during this period was when you came up to Washington to his office, which you described to the jury?—A. Yes.

Q. Approximately how long a period before the actual foreclosure sale in July were you initially contacted, Mr. Carrico?—A. Again, I just can not say. All I know, it was some time prior to June 15 and the first—you see, we get our local papers down there only coming once a week, and this property down here was advertised the first week, [1072] according to the certification, if you do not mind my referring to that.

Q. Certainly not. We are interested in the best facts we can get.—A. June 15, 1961.

Q. That was the date the advertisement was first published?—A. The first insertion and the last insertion was July 6, 1961.

Q. Your final work when the mortgage was actually released by the Court, approximately what date was that?—A. July 28, 1961.

Q. So, the period of time when you handled this foreclosure proceeding actually started with one or more phone calls from Congressman Johnson sometime shortly prior to June 15 and terminated approximately July 28, at least in so far as your work was concerned, when the mortgage was released?—A. As far as the work was concerned; yes, sir.

Q. Now, during that time your only contact with Congressman Johnson, other than the telephone calls, was the time you went to Washington to see him and discuss the reduction of the bond premium?—A. That is right; yes, sir.

Q. Now, some time in the summer of 1962, that is, last year, did not Congressman Johnson call you up and ask you what sort of commission would a lawyer be entitled to in a foreclosure proceeding in Charles County ordinarily?—A. He did, yes.

Q. And that is when you advised Congressman Johnson of the custom at least in Charles County, when the percentage was actually expressed in the mortgage, 3 or 6 percent, depending on whether or not the sale was consummated?—A. That was not the first time I advised him. I had also advised him sometime during the period prior to June 15, 1961, and the period of July 28, 1961.

[1073] Q. But from that time, initially, there had never been any mention of it until sometime last summer?—A. In the interval?

Q. Yes.—A. No.

Q. Now, Mr. Carrico, actually you wrote three separate letters to Congressman Johnson sometime subsequent to the foreclosure proceedings, attempting to get your costs and your fee paid, did you not?—A. That is correct. I think I turned over to you copies of those letters and told you about them. I think there was three.

Q. And finally, you did receive a check, and as you testified to the Jury here, you do not know from whom you received the check?—A. No, sir.

* * * * *

Q. Mr. Carrico, I show you Government Exhibit for identification 167 and ask you whether or not you can identify this exhibit.—A. This is a check dated September 14, 1961, to my order, Rudolph A. Carrico, $3,195.25, Charles County Land Company, Inc., and I cannot make the signatures out here, by two persons.

Q. Can you tell the endorsement on the back?—A. "For Deposit only to Rudolph A. Carrico Collection Account; Rudolph A. Carrico." That is my signature.

Q. That is the check you received as your fee, Mr. Carrico?—A. Yes, sir.

* * * * *

Q. Mr. Carrico, that check came to you in an envelope without any markings on it, did it not?

You just received the check in your office to the best of your recollection?—A. Without any markings—I do not remember any markings.

Q. Do you recall any covering letter with it?—A. No, it had a memorandum in it.

[1074] Q. I believe yesterday, Mr. Doub showed you an assignment which was executed by, I believe, a Mr. Woodman, Assistant Vice President of the Charles County Land Company.

I believe you testified that came to you in an envelope without a covering letter, is that correct?—A. Yes, that is correct.

* * * * *

Q. And you have been a friend of Congressman Johnson for many years, have you not?—A. Yes.

Q. Shortly before this trial began, Mr. Carrico, Congressman Johnson came down to visit you in your office, did he not?—A. With his attorney, Mr. Doub, and Mrs. Johnson.

Q. Right. And, at that time, Mr. Carrico, Mr. Johnson had prepared a statement of facts or events relating to this foreclosure which he gave to you to refresh your recollection, did he not?—A. No, that was prior to that time.

Q. How much prior to that time?—A. Probably a month or better, prior to that time. He mailed me a statement and wrote me a letter and asked me to review my files, at least he would appreciate it if I would review my files, and see if the memorandum that he had enclosed was correct dealing with——

Q. What did you do with that memorandum?—A. I read it and there was one or two things in there—although most of it was approximately correct.

Q. You tore it up, did you not?—A. I tore it up.

Q. You tore it up because there were too many discrepancies between his recollection and yours, did you not?—A. I recollect there were three discrepancies, as I recall.

Q. And the discrepancies related to Mr. Johnson's version that he had been down to see you in your office a number of times during this foreclosure proceeding, is that not correct?—A. Can I again refer to my note?

[1075] Q. Yes.—A. The day after I wrote a statement.

Q. But you do not have a copy of his memorandum?—A. No. And I sent him a statement, after review of my files, concluded what were the facts.

* * * * *

Q. Isn't it a fact that that memorandum which Mr. Johnson sent to you indicated that he had visited you on several occasions personally in La Plata during this foreclosure proceeding?—A. As I recollect, it stated that he had been in my office on May 1, of 1961 and that is relating to the foreclosure. And I had no indication of that.

Q. As a matter of fact, you even checked with your secretary to make certain you were correct on that?—A. I had no indication of that so I wrote up my statement with that eliminated and then sent him my statement and told him that I did not remember his being in my office on that date.

Now, if you want to go ahead with other changes.

Q. Discrepancies?—A. Another one was, and certainly very minor, that he started off by saying "I have known Congressman Johnson over a period of many years," which is true, and my statement says that.

Then he says, he had in the statement—I don't know the exact words, but I know it was along these lines—"When I had legal matters in the County, I would ask you if you were interested in being associated with me in a case."

I just changed this to read this way: "I believe that when he had any legal matters in the County, he would usually ask me if I was interested in being associated with him in the case."

Then the third one was—I remember, and I cannot get it specifically, the relation.

Q. Mr. Carrico, this statement as I understand, which Mr. Johnson sent to you, was prepared for you in the first [1076] person, is that correct?—A. I think it was. I am not positive of that.

Q. Was it prepared for you as you had your own prepared as though you, yourself, had prepared it?—A. Yes.

Q. And you do not have a copy of that? A. No. What happened is this: After I reviewed it and did not agree in toto with everything that was said, then I prepared a statement and then, at that time, concluding that I no longer had any reason for it, I tore it up.

* * * * *

Q. Now, one final question, Mr. Carrico, during the time that this foreclosure proceeding was handled, the actual work which was done in the foreclosure proceedings in Charles County, Maryland before the Court and in connection therewith was done by you and you alone, is that not correct?—A. All of it with the exception of the affidavit of indebtedness, and I do not know who drafted that. That was sent to me.

Q. That was the—I think that was the exhibit which was shown to you.—A. Signed by Mr. Woodman, I believe it is, saying that the debt due was $5,900,000—and whatever it was.

Q. I can't find Mr. Johnson's Exhibit but I show you Government Exhibit 153 which is the certified record of the Equity Court proceedings in Charles County, and ask you whether or not this statement of account is what you were referring to?—A. That is the statement of account.

Q. And you do not know from whom you actually received that statement of account, do you?—A. There was no forwarding letter with it.

Q. With the exception of that statement of account, you did all of the work, yourself?—A. My office.

Q. You and your office?—A. Yes.

* * * * *

[1077] Thereupon F. DeSALES MUDD, a witness, having been duly sworn, was examined and testified as follows:

The CLERK. State your name for the record.

The WITNESS. F. DeSales Mudd.

The CLERK. Take the stand, please.

DIRECT EXAMINATION

* * * * *

CROSS EXAMINATION

Q. All right, Mr. Mudd, if, as I understand your testimony correctly, the best of your recollection is that Congressman Johnson only came to your office in La Plata once during 1961 and that was on the May 1st occasion?—A. The only personal visit to the office I have been able to confirm from my office records.

Q. All right. Now, subsequent to that you were contacted by a number of other people in regard to this title work on the Charles County tract, weren't you, including Mr. Robinson, Congressman Boykin, Lykes Boykin and others?—A. Yes, sir. I might say that I think I contacted Lykes Boykin's firm and either talked to Mr. Boykin or his associate, Mr. DeFrancis, immediately after the May 1 visit to Congressman Johnson to determine whether in the opinion of that firm, I was at liberty to do this work for Congressman Johnson because of prior work for D.G. & R., Inc., in some instances at the request of Mr. Boykin and DeFrancis.

Q. And Lykes Boykin at that time was representing the so-called sellers, or the Desser interests, is that correct, or who was Lykes Boykin representing?—A. I do not know. Prior to May 1, more particularly on or about 1957 or 1958 some of the work I did for D.G. & R., Inc. of Mary-[1078]land

I had done in conjunction with and at the direction of Boykin and DeFrancis.

Q. Now, directing your attention back to the time that you went to work and during this period that you worked in the summer of 1961, actually you never knew whether or not Congressman Johnson was a client or principal in the transaction or just what his specific connection was with the Charles County Land Company, is not that correct?—A. Yes, that is correct.

Q. Is that a fair statement?—A. Yes, sir.

Q. And, as a matter of fact, once the work started, you had far more contact with Mr. W. L. Robinson, one of the defendants in this case, than with Congressman Johnson, did you not?—A. Towards the latter part of the transaction, yes, but initially, no.

Q. All right. Wasn't Mr. Robinson the person with whom you consulted regarding the progress or lack of progress during the period that you were working on this sale of the property?—A. Yes, sir, I contacted Mr. Robinson by letter and possibly by telephone about what I thought was the delay in Charles County Land concluding the acquisition of the Ryon property after the deed had been executed by the Ryons.

Q. As a matter of fact, Mr. Robinson came down to your office at least twice during the time you were doing the work, the title work on the sale and he actually went to the Record Office with you the day you recorded the mortgage, did he not, the First Continental Savings and Loan Association mortgage?—A. I put it the other way. I went to the office with him. He had papers executed which I did not prepare and which I had no reason to examine and actually waited in the clerk's office while my title clerk and I brought the title to date from our previous written report.

Q. And Congressman Johnson was not present then, was he?—A. To the best of my recollection, no.

[1079] Q. All right. Now, how long a period of time were you working on the title work in connection with the sale and on the acquisition of the Ryon property; what months would that be, approximately, in 1961?—A. Well, it indicates from the review of my file and the letters that are now in evidence, it began May 1, 1961 and continued through September of that year.

Q. Approximately five months. And during that period of time Congressman Johnson never did any title work in connection with this transaction to your knowledge, did he?—A. Personally, I never saw him work on the land records if that is what you mean.

Q. That is what I mean. And you kept records of, your own time records and you billed the Charles County Land Company, accordingly for the work done in connection with both the Ryon acquisition and the work done on the title in connection with the sale of the tract of land from Colonel Ernest's group to the Charles County Land Company, did you not?—A. Yes, sir.

Q. And you actually presented bills outlining the work which you did in this matter to the Charles County Land Company, did you not?—A. Yes, I believe I sent them to the Land Company in care of Congressman Johnson at his direction or to him, made out to the Charles County Land Company.

* * * * *

Q. Mr. Mudd, can you identify that exhibit?—A. Yes, sir, this is a bill from my office to the Charles County Land Company in favor of Congressman Johnson July 17, $575.00 for services from May 1 through July 17.

Q. And briefly what were the services?—A. Title.

Q. That was the title work which you did?—A. Yes, sir, and reports on several phases of the transactions we had discussed.

The CLERK. Government Exhibit 52-F marked in evidence.

[1080] [Government Exhibit 52-F marked in evidence.]

By Mr. TYDINGS:

Q. I show you government exhibit for identification 39 which was identified by Mr. Jackson Rains when he testified earlier in the case, and ask you whether or not you can identify government exhibit 39 for identification?—A. Yes, sir, that is the subsequent bill of September 11, 1961 for services and disbursements together with a check in payment thereof of $855.17.

The COURT. How much?

The WITNESS. $855.17.

The COURT. Does that include the $575.00?

The WITNESS. Yes, sir.

* * * * *

Q. Mr. Mudd, do these bills represent the total bills that you submitted for work done in this transaction in 1961?—A. I have no recollection of any other bills.

The COURT. Mr. Tydings, this bill is a duplication of the September 11th bill.

Mr. TYDINGS. There is also a duplication on these, Your Honor. The $575 bill is included in the first item. The $575 in the $855.17 bill so the total bill will be $855.17 plus what is not included in that bill is included in that one. I am trying to get every possible bill included here.

* * * * *

By Mr. TYDINGS:

Q. Mr. Mudd, would you tell the jury what your total legal charges were to the Charles County Land Company during 1961, the total amount?—A. Services, $850.00.

Q. $850.00. Tell the jury just what work that charge covered. The services which you performed for that [1081] $850.00?—A. You mean the type of work or the time involved?

Q. The type of work.—A. Well, it involved examination of the land records with respect to the $6 million mortgage which I understood from Congressman Johnson, his client had acquired. It included an examination of the title to the so-called "window" and approximately one hundred acres of land which had been released from the lien of the purchase money mortgage. It included the acquisition of the Ryon property and perfecting the title as best we could under the circumstances, to 9¼ acres of the Collier tract.

Q. How many hours approximately does that cover, Mr. Mudd?—A. An examination of my time records disclose that I personally worked on this matter on thirteen different occasions for a total of 14¼ hours.

Q. And would that include or not include any work done by any of your associates or law clerks?—A. No, sir.

Q. In other words, that charge, those hours would also be included in your total bill of $850?—A. The bill indicates about thirty hours of work by our associates and title clerk, in addition to my personal time.

Q. Now, a little earlier in cross examination I asked you a question which you answered in the affirmative to the effect that when you began work, you did not know whether or not Congressman Johnson was your client or not in this transaction. Actually, do your time records indicate that the first time work was done that the reference was to Boykin-Johnson property?—A. My time records on the first occasion show office conference with Congressman Johnson, regarding the Desser-Garfield prop-

erty. The subsequent notations are identified as Boykin property, Charles County land property, no consistency in that respect.

Q. The first-time charge for the work on May 8, 1961 is [1082] that listed? Would you check that and see whether that is listed as Boykin-Johnson property?—A. May 8?

Q. Yes, 1961.—A. 1961. Yes, that is "Boykin-Johnson Re: property."

Q. As a matter of fact, Mr. Mudd, even as late as January of 1962, you were still not certain whether or not Congressman Johnson was not your client or not one of the principals in this land transaction, is that not correct?—A. That is correct. The ultimate purchaser had been identified as Charles County Land Company; the principals I did not know.

Q. And, during this year 1961, actually, it was your understanding that Lykes Boykin was representing the sellers and W. L. Robinson was representing the purchasers, is that not correct?—A. It was my understanding that Lykes Boykin represented the intermediary holder of the mortgage and that Mr. Robinson was associated with Congressman Johnson or with picking up where Congressman Johnson left off.

Q. And was doing the legal work for the purchasers of the Charles County Land Company?—A. Yes, he personally to my knowledge did some of it.

* * * * *

Thereupon HARRY ADELBERG, a witness, having been previously sworn, resumed his testimony as follows:

The COURT. Mr. Doub?

DIRECT EXAMINATION (continued)

* * * * *

CROSS EXAMINATION

By Mr. WEINER:

* * * * *

[1083] Q. Do you remember testifying yesterday that some time after Mr. Robinson brought the mortgages to your office, the Cassell mortgages, these 305 mortgages, the Congressman came to your office and that the Congressman went in to your associate's room and that the Congressman spent some time in examining these Cassell mortgages; do you recall that?—A. Yes.

Q. You testified to that?—A. Yes, as a matter of fact, I can enlarge upon that if you care to.

Q. Oh, yes.—A. I also recall after I left the stand that we then discussed the question of the Curative Act, as a matter of fact, in the presence of my son-in-law I secured the Code and opened it for the Congressman. In fact, we were talking about it, started recalling the thing, and I gave the Congressman the Code.

Q. All in your office?—A. No, around the suite. I gave him a copy of the Code. Where he was at the time, I do not remember. I remember giving him a copy of the Code. And, as a matter of fact, the memorandum he made in the offices which he left in the files dealt, I think, in part with the Curative Act.

I had not looked at the memorandum.

Q. You say the Congressman did do legal research?—A. He certainly did.

Q. And you and the Congressman were entirely in agreement as to what should be done. Do you remember saying that?—A. That was our final conclusion.

Q. Do you remember saying, "And we finally worked out a confirmatory mortgage." Do you remember saying that?—A. No. If I said "we", that did not include the Congressman.

Q. That did not include the Congressman?—A. No. The confirmatory mortgage was worked on in my offices and Robinson was there while we prepared it. In fact, I had Mr. Silver of my staff work on it. He prepared a draft. [1084] We revised it, and there was a great deal of conversation. But I have got to enlarge on that further.

Q. Did you recall there were 305 mortgages?—A. I am vacillating between 305 and 306, but I think there were 305 mortgages.

Q. I will accept whatever number you want.—A. Well, thank you very much. And the fact does remain that there were other problems. Not only with the confirmatory mortgage. There was a basic mortgage, as I recall it.

Q. In this discussion you had with Congressman Johnson in your office that you are relating now?—A. I am sure he was informed of it, and I am sure that we had discussed it because this related to the primary problem.

Q. You discussed all this with him?—A. That is in one area or another. Now, I have got to say this to you: In actually drafting the confirmatory mortgage, the Congressman did not participate and I might point out to you that while I dislike putting myself in the category, for instance, in your own of-

fices you will refer something to someone to draw for you, I like to think that I am head of my own office but nevertheless this was the assignment. I had to draw a confirmatory mortgage or mortgages and I know this, that this discussion, Mr. Weiner, extended over a period of not one day but many days.

Q. It was real extensive?—A. It was extensive.

Q. You had extensive contact with the Congressman through all this?—A. I did not say that. I said the whole matter extended continuously. As a matter of fact, one of the problems, and I think I said this yesterday, was that it was my first impression and feeling that the best practice dictated individual confirmatory mortgages which meant the preparation and the filing of 305 documents.

Q. But you——.—A. I wanted to say this, that was one of the reasons for our disagreements. Robinson screamed and yelled that he did not want to spend the money or his [1085] association did not want to spend the money. I know he appealed to Johnson. I spoke to Johnson about it. We engaged, back and forth—we did other research.

Q. Who did you mean by "we"?—A. My office.

Q. You did not mean Congressman Johnson?—A. I am afraid I do not have the privilege of combining the Congressman and myself in many activities but getting back to this phase of it, we engaged in research back and forth because it was a distinct problem and the mere recording cost of 305 documents is substantial as you know, and the preparation work on them. But I think I finally accepted the view after research and discussion, that it could be done in a combined mortgage and I think one of the troubles that Robinson had is that he was not familiar with Maryland law. And being unfamiliar with Maryland law, he was not aware of the mortgage requirements in the State.

* * * * *

Q. Did you not tell the grand jury with respect to this examination of the mortgage portfolio that it was your recollection more than a year ago that you had received some inquiry or some call, maybe from Congressman Johnson and maybe from someone else, and that it was as a result of this call that you visited the offices of First Continental Savings and Loan Association?—A. That may be correct.

Q. And did you not tell the Grand Jury that when you went to the offices of First Continental Savings and Loan Associa-

tion, Congressman Johnson was not there?—A. No, he was not there. I am sure he was not.

Q. And didn't you tell the grand jury on that day more than a year ago, that you had no idea whether Congressman Johnson had ever gotten or checked those Cassell Mortgages? —A. If I said that, I was in error.

Q. And do you deny that you said that?—A. I do not. You have the record there.

* * * * *

[1086] Q. Is it not also a fact that these 305 Cassell mortgages which were individually bad as you say, were 305 printed copies of a printed form which were different only in that they had a couple of blanks where you filled in the amount and where you filled in a lot and block number and where on one page someone had to sign it?—A. Well, they were all on printed forms and I think I testified to that on direct. However, we had to examine each form because they involved a different person with a different record date and I was not at all certain. I did not know until I examined each mortgage on that to make sure there had been no collective effort or no changes. I do now know this. If you examined a few, you were examining the whole before it was ultimately through.

Q. You examined one in which the printed affidavit was not there—you were examining all of them?—A. It ultimately so developed that you had to check them all to make sure.

Q. I have just handed you, have I not, one of these printed forms?—A. Yes.

Q. Than there was a short printed mortgage note, is not that right? A. The note was not submitted to me.

Q. The note was never submitted to you?—A. No, sir.

Q. Just the mortgage?—A. Just the mortgage.

Mr. WEINER. If Your Honor please, I would like to offer into evidence at this time the printed mortgage form which the witness has just identified as government Exhibit 169.

The CLERK. Government Exhibit 169 marked in evidence

[Government Exhibit 169 marked in evidence.]

Mr. DOUB. May I see that?

Mr. WEINER. Surely.

[1087] Now, if Your Honor please, I would like to exhibit to the jury for their examination printed mortgage form Government Exhibit 169.

By Mr. WEINER:

Q. Now, Mr. Adelberg, is it not a fact that this corrective instrument that you prepared was never even fully executed or even placed of record to correct this?—A. I would not know that, Mr. Weiner.

Q. You mean you just gave it to Mr. Robinson?—A. I prepared it in final form, gave it to Mr. Robinson. Certainly, Mr. Cassell was not in the office to execute it. He was the president of the firm and he simply left with it.

Q. You never followed through to see whether——.—A. That was not my job. Mr. Robinson presumably is a lawyer. He is house lawyer or representative of this building and loan association. He delivered the papers and that completed it as far as I was concerned.

* * * * *

The COURT. Members of the Jury, I have just overruled the motions of the defendant that the Government not be allowed to use the grand jury testimony of the Defendant Johnson and the Defendant Boykin when cross examining the respective defendants.

Mr. WILLIAMS. I didn't make any such motion as that on behalf of Boykin for cross examination purposes. That wasn't my argument.

The COURT. All right. Well, it was made by Mr. Doub. I overrule the motion of the Defendant Johnson that the testimony given by Mr. Johnson to the grand jury not be used.

We will make such rulings as may be necessary then if and when Mr. Boykin takes the stand. I had understood that was the motion or part of the motion, as well as other parts. [1088] You may go ahead and cross examine using the transcript, if you wish.

Thereupon, THOMAS F. JOHNSON resumed the stand and testified further as follows:

CROSS EXAMINATION (continued)

By Mr. MARION:

Q. Congressman, it is a fact, is it not, that on September 25, 1962, you did testify under oath before the Federal grand jury?—A. I did.

* * * * *

Do I understand from what you testified that you don't recall whether you actually delivered the speech or whether the written copy was merely submitted to the Clerk?—A. Mr. Marion, I do not. It was such an insignificant speech that I do not recall whether it was just handed to the Clerk, as we often do, or whether it was delivered or delivered in part.

Mr. DOUB. Will you ask him what he means by "delivered in part?"

By Mr. MARION:

Q. Would you answer Mr. Doub's question?—A. In part, after the close of the business session of the House of Representatives usually the members of Congress like to insert in the Congressional Record certain remarks. They may do that either by taking the written memorandum, giving it to the Clerk, asking it be inserted, or they may take the well, as we term it, give a part of the speech, and then ask that so much be considered reading all of the speech, or it may be delivered in full.

Q. As a matter of fact, Congressman, did you not deliver the speech in full on the floor of the House of Congress?—A. Mr. Marion, I could have. I do not recall.

[1089] Q. Let me refresh your recollection, if I might, from page 12 of the Federal grand jury transcript, beginning with the question on line 15:

> Directing your attention, Congressman, to June 30, 1960, you made a speech on the floor of the House of Representatives, is that correct?
>
> Answer: That is true.

Is that correct?—A. Yes, it was a very loose concept. We are charged with anything that appears in the Record. When we say make a speech, even if we hand it to the Clerk, we call that making a speech.

Q. Your testimony here is you don't recall exactly how that speech was delivered?—A. As I say, it was such an insignificant speech that had been made so much about, I do not even recall having made the speech at this time.

Q. Now, Congressman, you told Mr. Estabrook on December 20, 1961, in London, did you not, that this speech had been made at the urging of several of your own people or of your own constituents? Is that not a fact?—A. Which conference are you speaking of with Mr. Estabrook?

Q. I am asking you whether or not that day you told that to Mr. Estabrook?

Mr. DOUB. Which telephone call?

The COURT. Do you mean on the first call or the second one?

Mr. MARION. On either one, did you make that statement, or do you recall?

The WITNESS. I do not recall. I testified that the first telephone call was made at some 2:30 in the morning and I did not recall what was said to Mr. Estabrook.

By Mr. MARION:

Q. Mr. Estabrook, I believe, testified, Congressman, that [1090] this language was used by you in the second telephone call when you called him back at approximately noon on December 20, did you at that time tell him that this——

Mr. DOUB. Show him the record on that.

Mr. MARION. Do you have it?

I do not have it here.

By Mr. MARION:

Q. My question to the Congressman is whether or not you told him that in a second telephone conversation in London on December 20, 1961?—A. Mr. Marion, I do not recall what was said.

Q. You do not recall either of the two conversations?—A. I recall talking to Mr. Estabrook but he did not see me personally. All of the conversation was over the phone. One at 2:30 in the morning and the other I do not recall—some time the next day. I just do not recall.

Q. As a matter of fact, Congressman, no savings and loan official from the Eastern Shore ever talked to you about making such a speech on the floor of the House of Representatives, did they?—A. I do not recall of any.

Q. And no constituent of yours ever talked to you about making such a speech on the floor of the House of Congress?—A. Well, Mr. Buarque—who was certainly very much of a constituent, he was in the office—he certainly talked with me rather strongly to answer what he felt and I felt too, was a most unfair attack on the savings and loan institutions.

Q. Excepting Mr. Buarque who was your administrative assistant, did any constituent of yours request you to make that speech on the floor of the House of Congress?—A. I recall one

visit a gentleman who has testified, Heflin, stating that he represented as Public Relations, certain savings and loan.

Q. Was Mr. Heflin a constituent of yours?—A. No. But he stated he did represent the savings and loans.

[1091] Q. Did he represent any savings and loans in your district?—A. I do not know.

Q. You did not inquire of him about that?—A. I did not because I only talked with him a very few minutes, let him with Mr. Buarque.

Q. As a matter of fact, then, except for Mr. Buarque, whom you term a constituent, no constituent of yours ever spoke to you about making that speech on the floor ofthe House of Congress, is that not correct?—A. It could be. I do not recall.

Q. You would be—you would not deny it?—A. No.

Q. Is it not a fact that prior to that speech Congressman, you had never discussed savings and loan programs or problems with any of your constituents on the Eastern Shore of Maryland?—A. Oh, I think possibly I had. I do not know to what degree but I want to say too, that the speech you refer to there was a motivation that Mr. Buarque testified that I was interested in a statewide election for the Senate in 1964.

* * * * *

Q. Let me refresh your recollection if I might once again, from page 10, first of all, of your Federal Grand Jury testimony. Beginning at line 20.

> Did you ever discuss any of the problems of the savings and loan industry with any savings and loan people who were your constituent prior to June 30, 1960?
>
> Answer: I do not know of any. If you could direct my attention to specific—
>
> Question: No, I could not do that.
>
> Answer: I could have but I do not recall.

* * * * *

[1092] By Mr. MARION:

Q. Congressman, on Thursday the second of May, you were asked about a meeting with Mr. Heflin, and I am reading from page 3193 of the transcript, and the question was:

> Q. Now, where do you recall meeting a Mr. Heflin?—A. After Mr. Heflin testified I recall that I had met him once at the Congressional Hotel.

Q. Is that at a luncheon?—A. That was at a luncheon that Marshall Diggs wanted to discuss the Bridge matter and I did not know Mr. Heflin was there until he testified, and I would accept his word he was there.

Is it not a fact, Congressman, that prior to that statement on Thursday, May 2, you had testified and told both the Federal Grand Jury on September 25, 1962, and the Montgomery County Grand Jury on May 9, 1962, that you remembered meeting with Mr. Edlin and Mr. Heflin prior to May 27 in the Congressional Hotel?—A. Would you let me know what page of the Federal Grand Jury you refer to?

Q. Beginning on page 18. Page 21, line 21, I am sorry, of page 18.

Did Mr. Kenneth Edlin ever mention the speech with you prior to mentioning the possibility of your making the speech?—A. I do not recall on that.

Q. Did Mr. Robinson?—A. ——

Mr. DOUB. Just a moment. You misquoted his testimony. He testified here at page 3193?

Now, do you recall thereafter in June, 1960, Mr. Heflin coming to your office to speak to you?—A. I do remember his coming in my office.

Q. Tell the jury of your conversation with him, Mr. Johnson.

[1093] And then he proceeds to tell about that.

Mr. MARION. My question is based on his statement in this Court that he did not recall Mr. Heflin's meeting with him at the Congressional Hotel until Mr. Heflin came on the stand and testified about it, himself. I read further from your Federal Grand Jury testimony.

Q. Did Mr. Robinson?—A. I do not think Mr. Robinson did. Mr. Edlin may have when I met Mr. Heflin at the hotel but I do not recall.

Q. Who did you meet at the hotel?—A. I said I mentioned there that I thought I had met Mr. Heflin once at the Congressional and I believe that Mr. Edlin and a group were with him.

And prior to that time?—A. Wait you asked me a question. I do not know what your question is.

Q. Well, did you not know when you testified before the Federal Grand Jury that you had met Mr. Heflin at the Con-

gressional Hotel?—A. I told you that I may have met him at the Hotel. That was the incident that I had no recollection of. It was refreshed when Mr. Heflin testified but it was so insignificant as to the meeting because Mr. Diggs had refreshed my recollection that it was on the Bridge matter, that there was a meeting and we, of course, were in constant meetings in Washington, and it is difficult to remember exactly who was present and when.

Q. Yes, and before the Montgomery County Grand Jury also, Congressman, did you not recall that luncheon meeting and recall that you had met Mr. Heflin at that meeting?—A. I may have.

Q. Let me refresh your recollection then on page 48 of the Montgomery County Grand Jury transcript.

> Q. Do you recall a conference or meeting you had with Mr. Edlin, Mr. Rains being present and a man by the name of Heflin?—A. Heflin is the one I am talking about on that.
>
> [1094] Q. Do you recall that meeting?—A. I do not recall specifically on that.
>
> Q. Can you refresh your recollection? Did you or did you not have a meeting with J. Kenneth Edlin in regard to that speech?—A. If I remember correctly, I believe it was. They were having lunch over at the Congressional Hotel and I think I just stopped by.
>
> Q. And was there a conversation at that time with Mr. Edlin in regard to remarks that he would like to have you make on the House Floor in regard to building and loans?—A. It could be. But I do not recall anything about that.
>
> Q. It could have happened.—A. It could. But I say we have so many who want to make remarks and want to put things in but at that time there was no legislation pending before us or anything.

Was that your testimony before the Montgomery County Grand Jury?—A. Yes, and I think it bears out exactly what has been said since. That I would like to refresh again that in Washington almost daily we are confronted with individuals who want remarks put in the record, or speeches made so it is a very common thing to have a request made of that sort.

Q. So you would not deny then, Congressman, that Mr. Edlin may have talked with you about making a speech which

he wished made on the floor of the House of Congress?—A. He could have but I say, I do not recall his ever doing it.

Q. And, therefore, your testimony would not quite be correct on page 3196 of the transcript in this case when you said "Absolutely not," that Kenneth Edlin had ever said anything to you about making a speech?

The COURT. It is not a question of whether he thinks his testimony is correct. That is for the jury to say. The question is, you may ask him if he wishes to change his testimony.

[1095] By Mr. MARION:

Q. Would you wish to change that?—A. No, I have no recollection of Mr. Edlin ever asking me about a speech or making a speech. Absolutely none.

Q. Now, Mr. Heflin was introduced to you at the luncheon in the Congressional Hotel, was he not, by Mr. Edlin?—A. It could have been by Mr. Edlin. Mr. Diggs refreshed may recollection and I gather from the testimony that maybe Mr. Diggs was the one and not Mr. Edlin but I do not recall.

Q. You never knew Mr. Diggs, rather, Mr. Heflin to have any connection with the Assateague Island Bridge Matter, did you?—A. No, but Mr. Diggs informed that he was a friend of his but that was later.

Q. You did know that Mr. Heflin had an association with a group of savings and loan associations, did you not?—A. Well, I was told that either at the luncheon or later.

Q. And did you not tell Mr. Heflin when he came to see you in your office after that luncheon that he should work with Mr. Buarque on the preparation of the speech which was ultimately given on June 30?—A. My statement is the same as it has always been that Mr. Heflin came to my office, representing himself as a public relations man, for a certain institute of Independent Savings and Loan Associations. He had the article of one of the local newspapers. A very unfair attack which he claimed had been made on savings and loans. He talked with me a very short time. I told him that Mr. Buarque, my administrative assistant, did all of my writing, all of the conversations and if there were any answers to be made,—he went out with me to the next room, met Mr. Buarque and I left the two together.

I did not see Mr. Heflin any more until the day he arrived in the court.

Q. You told him, did you not, that he should work with [1096] Mr. Buarque on the matter since Mr. Buarque prepared your speeches?—A. I told him at the time to discuss it with Mr. Buarque and any arrangements Mr. Buarque wanted to make, why, he, of course, would be cooperative with him.

Q. After the speech had been made on June 30, Congressman, the matter was closed as far as you were concerned, was it not?—A. Not only closed but completely forgotten until some politics got into it.

Q. So you really had no intention, did you, of using that speech as a statewide issue?—A. I thought we would get better release on it but it was not received very well in the press and I do not think anything was ever said.

Q. As a matter of fact, you told the State Senator, John Clarence North three days later that you had no further interest in the matter, did you not?—A. I think that should be clarified. Senator North came to my office with two members of the Maryland Savings and Loan League representing the Federally chartered institutions. They were concerned with speeches being made in Congress by Congressmen King, Utt and particularly the one that I had delivered on June 30. They wanted to know whether or not I intended to make further speeches.

I told them I had made the speech. It was my obligation as a Congressman to answer what I thought was an unfair attack on innocent savings and loan associations.

I had answered the charge. I had no further interest whatsoever in the subject matter. One savings and loan association did not mean any more to me than another. They were very thankful for the fact that I had no further interest.

We passed certain pleasantries and they left.

Q. Now, you say that at that time—I assume you meant at the time of the speech—that one savings association meant nothing more to you than another. Is that what you [1097] referred to?—A. Not only then but following the speech, too.

Q. I believe you testified on direct examination that you did not know the name of First Continental Savings and Loan or First Colony Savings and Loan at the time this speech was delivered on June 30, is that your testimony?—A. I think my testimony is that one name did not mean more than another. That in reviewing my file, in the bridge corporation, I think one association, either First Continental was named or First Colony,

but it meant nothing in passing. That is the only reference that I knew.

Q. Did it mean anything to you at the time of the speech in June, of 1960?—A. Absolutely not. I had no idea of who First Colony or First Continental was in respect to their ownership or anything about them.

Q. Now, your speech was finally delivered or submitted to the clerk and it was printed in the Congressional Record, and it stresses the value of commercial mortgage guaranty insurance, does it not?—A. I think it has a reference to it, yes.

Q. Isn't it a fact that at the time of the speech, First Continental and First Colony were the only independent savings and loan associations in the State of Maryland which carried commercial mortgage guaranty insurance?—A. I have no knowledge of that and did not know at the time.

Q. You have no knowledge of that?—A. None, whatever.

Q. As a matter of fact, that language in your speech, Congressman, was a part of the language which Mr. Edlin emphasized in his reprint, was it not?—A. May I say that I did not see any of the so-called "reprints." The first one I ever did see was in the court room here of any marked "reprints."

Q. And is it not also a fact, Congressman, that the St. Lawrence Insurance Company was the insurance com- [1098] pany which, at that time, insuranced [sic] the mortgage port-folio of only two independent savings and loan associations in Maryland. First Colony and First Continental, as of June 30?—A. I did not know at that time. I did know later that St. Lawrence, but it was much later.

Q. As a matter of fact, Congressman, on the very day you gave the speech, on June 30, 1960, you were conferring in your office, were you not with a Mr. Passman, an attorney from Chicago who represented the St. Lawrence Insurance Company about the possibility of your representing that insurance company in the State of Maryland?—A. Mr. Passman came to my office. He was an attorney from Chicago. He wanted to know whether or not I would represent his client. I made inquiry as to whether or not there were to be services performed for his client. I found they could not. I wrote Mr. Passman and told him that nothing could be done. There was no fee to be charged and I think you have a letter and may I see that letter that you have which confirms that?

The COURT. Mr. Johnson, that is not in answer to the question. Will you answer the question Mr. Marion asked and then you can explain that if necessary.

The question was whether on June 30 you had a conference with this attorney for a company with regard to possible representation.

The WITNESS. I had a conference but if you would let me see the letter to refresh my mind——

Mr. MARION. I ask that that be marked.

The CLERK. Government Exhibit 172 marked for identification.

[Government Exhibit 172 marked for identification.]

Mr. DOUB. May I see that?

By Mr. MARION:

Q. I show you Government Exhibit 172 for identification and ask if your mind is refreshed that on June 30, 1960 [1099] you met Mr. Passman—the attorney, for the St. Lawrence Insurance Co. in your Congressional office in Washington?—A. I did because this letter under date of July 1, 1960, says—

> I wish to thank you for your graciousness in affording me the courtesy of your time yesterday, especially since you were so extremely busy.
>
> Enclosed is the resume of the information and thinking involving the possibility of the admission by the State of Maryland of St. Lawrence Insurance Company as a foreign company under Section 31 of the laws of Maryland relating to Insurance (1953.)
>
> While on the surface, Section 31 does not specifically require a three year existence for admission, the practical existence of this limitation is the reason for the problem confronting us. St. Lawrence received its authority on June 30, 1959, as an Illinois Company (enclosed is a copy of the above mentioned authority). Due to the fact that it is necessary to obtain admission, we require a local counsel in Maryland to pursue the effort necessary to obtain admission. This letter is for the purpose of acquainting you with some basic information so that you may be in a position to determine whether you would be willing to undertake the representation of St. Lawrence Insurance Company in this instance.
>
> Please inform me as to your decision if you do decide to represent my client, and what other information may

be required by the State. I would also like to know your thinking as to your fee.

I regret that, in addition to your press of business my time was too limited to permit the acceptance of your kind offer to see first hand the working of the "wheels of government." Since there is a rather pressing time element involved, a prompt reply would be appreciated.

Yours truly,

HAROLD L. PASSMAN.

[1100] The COURT. Now, the question is not about what happened afterwards. The question is whether you had a conference with this man on that day and I gather the answer is yes; now go on to the next question.

By Mr. MARION:

Q. While Mr. Passman was in your office, that day, you also called the Deputy Insurance Commissioner of Maryland in Baltimore on his behalf, did you not?—A. I could have. I do not recall.

Mr. MARION. We will offer this letter which has been read to the jury.

The CLERK. Government Exhibit 172 marked in evidence.

[Government Exhibit 172 marked in evidence.]

The WITNESS. May I also attach to that the attachment that went with it?

The COURT. Has it any materiality to the question which was put?

Mr. DOUB. Your Honor, we do not under the circumstances understand the materiality of the question.

The COURT. It is obvious to me, and if you wish me to explain: I think it will be obvious to the jury; if you want me to explain to the jury, why, I think it is obvious, but I will.

By Mr. MARION:

Q. Congressman, is it not a fact that Mr. Edlin was the man who introduced you to Mr. Passman and to the St. Lawrence Insurance Co.?—A. I do not recall.

Q. You do not deny that that is possible?—A. I do not deny. I do not recall. It may have been Mr. Robinson or it may have been referred to me by someone else.

I do want to say I did advise Mr. Passman that I could not represent him and there was no fee paid.

[1101] Q. As a matter of fact, Congressman, when you later in your testimony in the late fall or early winter of 1960 inquired

of the insurance Commissioner of Maryland with respect to a matter of group life insurance on shareholders, you were at that time interested in the St. Lawrence Company, were you not?—A. I think in my direct testimony I stated that possibly October or November that there was a request for group life and one of the companies was the St. Lawrence.

Q. That was the same group?—A. The same company.

Q. Is that correct?—A. Yes.

Q. And, as a matter of fact, the president of that company was Mr. S. M. Simon, was it not?—A. Yes.

Q. He was the man I think you testified you corresponded with in 1961 with respect to the trustee's bond in Charles County, I believe you introduced a letter to you which was signed by Mr. Simon?—A. Yes, to explain to the jury that, when Mr. Carrico told me I had to have a $6 million bond with a $24,000 premium, I began to look around and tried to see what would be the lowest premium that could be secured for that bond, so I did get in touch with Mr. Simon, whether he wanted to bid or be interested in supplying that bond.

Q. Now, is it not a fact that prior to your speech on June 30, in the course of your dealings with Mr. Robinson and Mr. Edlin involving the Assateague Island Bridge matter that they had advised you that they represented First Colony and First Continental and you knew that at that time?—A. I do not recall their telling me. I know that there was a communication, a letter that I received, I believe, from Mr. Robinson mentioning First Colony. They could have mentioned it but I do not recall.

Q. Let me refresh your recollection from your Montgomery County Grand Jury testimony, beginning on page 3, and the questioning relates to the time when you met Mr. Edlin.—A. Is that page 3?

[1102] Q. Yes, and I am reading from near the bottom, the last answer of that page.

> A. I met him through a Mr. Marshall Diggs, who was Chairman, I believe, of the Bridge Company. Mr. Diggs along with the Associates of the Bridge concern brought Mr. Edlin and I believe a Mr. Robinson to my office to discuss this bridge loan. The purpose of that meeting was to secure a loan from Mr. Edlin or well, from his associates there. He mentioned First Continental Mortgage and First Colony at that time,

and then skipping over your testimony on the top of that page, and the question in the middle of that page:

> Q. How did he hold himself out to you, sir, at that time, in regard to First Continental and First Colony?—A. Well, I would like to—I want to finish there but the legal work was done by Mr. Robinson or a memorandum was prepared. Mr. Edlin held himself out as he termed himself, an underwriter.
>
> Q. For First Continental and First Colony?—A. And First Continental Mortgage Company.
>
> Q. And First Continental Mortgage Company?—A. Yes.

Refreshing your recollection further from your Federal Grand Jury testimony, on page 23—the question:

> Q. Now, what were Mr. Edlin's financial institutions which he represented or held himself out to represent?—A. At the time of the bridge, he stated the First Continental.
>
> Q. Mortgage Company?—A. There was the First Continental Mortgage Company?
>
> Q. Of Miami?—A. Right. The First Continental Savings and Loan in Chevy Chase or Bethesda, I do not know which it is, the First Colony in Southern Maryland. He also stated that he was interested in the two banks which were helping in the financing.
>
> [1103] Q. Gotham Bank?—A. Yes, and one in Chicago.
>
> Q. Southside?—A. Yes.

So, it is not true, Congressman, that you knew about First Colony and First Continental at the time this speech was made through your associations with Mr. Edlin and Mr. Robinson?—A. It could have been mentioned, First Colony. There was a memorandum submitted. The Bridge Company were seeking a $1.7 million loan. I do not recall First Continental being mentioned. It could have been but I do not recall at any time ever discussing First Continental Savings and Loan.

The COURT. Do you dispute that you gave the testimony Mr. Marion read?

The WITNESS. No, I do not dispute it. I possibly could have been wrong as to First Continental Savings and Loan. I know they mentioned First Continental Savings and Loan.

By Mr. MARION:

Q. At the time of your speech, Congressman, Mr. Buarque's research indicated did it not, that there were at that time three indicated institutions in the State of Maryland?—A. Yes.

Q. That is correct?—A. According to his testimony, yes.

Q. And one of those institutions was First Colony Savings and Loan Association along with Mr. Edlin, right?—A. I found out later that was true, yes.

Q. Did you not know that at the time you gave the speech?—A. I absolutely did not know at that time.

Q. Congressman, do you mean to tell the jury that Mr. Buarque put that language in the speech about three indicted institutions and none convicted, and you did not inquire as to which particular institutions they were?—A. He did not tell me which they were, the names.

Q. Well, let me ask you this: How could you, if you did [1104] not know which institutions were under indictment, how could you make this statement in your speech:

> I personally do not know any of these institutions nor any of the circumstances leading to their respective indictments. I hold no brief for any of them, one way or another.

That is the language of your speech, is it not?—A. Yes, I said that is the prepared speech which had been testified that Mr. Buarque with some help from Heflin, prepared.

Q. And do you mean that you made the statement in that speech that you, personally, did not know which institutions were then under indictment without knowing with institutions in fact were under indictment?—A. Not only did I not know then, I do not know now.

* * * * *

Q. And is it not further a fact in the prepared statement you do not state any where in there that you had met Mr. Robinson at any time prior to August of 1960?—A. I don't know. If you say it is not in here, it is not, but I don't recall being asked.

Q. Let me refresh your recollection. As a matter of fact, when you discussed the Assateague matter in your first meeting with Mr. Edlin you never mentioned Mr. Robinson. I will read your prepared statement. I am reading from the top of page 2.

* * * * *

I wish to say as to Mr. Edlin, to the best of my knowledge he was introduced to me during the winter of 1960 by Marshall Diggs, Esquire, Chairman of the Assateague Island Corporation, as one who was interested in providing financing for the proposed bridge to Assateague Island in Worcester County, Maryland.

At that time and for some time previously I had been acting as one of the attorneys for the bridge group. The group met with Mr. Edlin only a few times as the [1105] negotiations were soon terminated since the State of Maryland agreed to build the bridge from public funds.

Then you have a paragraph about the speech on June 30th, and then your first mention of Mr. Robinson is in this paragraph:

During the latter part of August, 1960, I had a visit at my Washington office from Mr. William L. Robinson, advising that he was General Counsel for certain savings and loan associations and a mortgage company in Florida. He stated he was not a member of the Maryland Bar, and as the mortgages securing the loans were for the most part on Maryland properties, he would like local Maryland counsel and would my firm serve.

* * * * *

Q. Is that portion of the statement which I have read correctly stated, Congressman?—A. It is correctly stated that Mr. Robinson came to my office some time, I think, in August or September. To the best of my recollection I wasn't asked when I first met Mr. Robinson.

* * * * *

By Mr. MARION:

Q. I show you, Congressman Johnson, Government's Exhibit 60–A, which is a check, I believe you have identified this, dated August 30, 1960, in the amount of $1,000 to you from Mr. Robinson?—A. That is true.

Q. I ask you where you were when you received that check?—A. I do not know where I was when I received it. Either through the mail or in the office, but I did receive it, deposited it in my legal account.

Q. And did you receive it from Mr. Robinson?—A. Either directly or through the mail.

Q. And was there any covering letter which accompanied that check?—A. I don't recall.

[1106] Q. Now, you testified that some time in August or September you began work on a matter which involved the Engineering and Development Corporation on a tract of land known as Apple Grove in Prince Georges County. Is that correct?—A. Yes, it is correct, and I think I testified that.

Q. My question was that is correct, is it not?—A. That is right.

Q. And there was a settlement with respect to the acquisition of that tract by Engineering and Development Corporation, was there not?—A. That is true. I did not participate in it.

Q. Do you know when that was?—A. It was either September 2 or September 6, 1960.

Q. And do you know where that settlement took place?—A. I think at Congressman Sasscer's office at Upper Marlboro.

Q. You were not there?—A. No, I did not participate in the settlement.

Q. Who was the seller in that transaction?—A. May I have my records on that?

The COURT. Yes.

Mr. DOUB. Do you want the exhibits on Engineering and Development?

The WITNESS. My folder is missing on it. It is marked for identification.

The CLERK. I have it. It is part of 50, I believe, and 50-A through 50-H have been received in evidence and the rest are not.

The WITNESS. Mr. Marion, without going through all the records to say I did not handle this, it indicates that Hopkins and Wayson, Inc. I presume they held the second mortgage, and I presume they were the ones selling.

[1107] Mr. DOUB. I can't hear you, Mr. Johnson.

Mr. MARION. He said he presumed that Hopkins and Wayson were the sellers.

The WITNESS. But the negotiations were between First Continental Savings and Loan Association and the Engineering and Development Corporation of Maryland. That is the Apple Grove transaction.

By Mr. MARION:

Q. Who represented Hopkins and Wayson, Congressman?—A. I say, I wasn't present. Only from what I have been told.

Q. Who represented Engineering and Development Corporation in that matter?—A. I think Mr. Robinson and a local attorney in Baltimore, Mr. Berman, as I recall. I was told that.

Q. They represented Engineering and Development or represented First Continental?—A. No. First Continental Savings and Loan.

Q. Who represented Engineering and Development Corporation?—A. I do not know. I wasn't present.

Q. You had no contact with any attorney for Engineering and Development Corporation?—A. I did not.

Q. And what contact did you have with Mr. Berman, whom you say represented First Continental?—A. I had not contact. I was told that Mr. Berman was no longer serving as counsel with Mr. Robinson. That was some time about the first of September.

Q. Do you know who recorded the original instruments in that matter?—A. I do not.

Q. Do you know when they were recorded?—A. No, I do not.

Q. And isn't it a fact, Congressman, that you never saw the original documents in that transaction?—A. You mean the ones that were recorded?

[1108] Q. The ones ultimately recorded.—A. I probably did not see the original, only copies.

Q. Yes, and the originals were in the possession of Mr. Berman, a Baltimore lawyer, were they not?—A. As I say, I did not handle the closing or the preparation of this particular loan.

Q. But the original documents, of which you have copies in your file, were in the possession of Mr. Berman, were they not?—A. I do not know.

Q. And is it not a fact that he did legal work on this transaction, billed First Continental, and was paid for his legal work on that particular transaction?—A. Again, hearsay. I was told that he was an attorney working with Robinson. Some disagreement arose, and it was over this transaction, as I understand, there was termination of that representation by Mr. Berman.

Q. And during September of 1960, at the time this was going on, you were engaged, were you not, Congressman, in a campaign for reelection?—A. I am always engaged in a campaign for reelection during the year.

Q. Now, in connection with the Engineering and Development matter in August or September of 1960, Congressman,

you prepared no legal memorandum of any sort, did you?—A. You are speaking now of the Apple Grove?

Q. That is correct.—A. I do not recall. I would have to go through my file and see.

Q. You have a file on your lap, do you not?—A. I have one here, yes.

Q. Do you have any others?—A. Well, I was told that some of my files are missing, and Mr. Robinson has some. Some are in the Baltimore office.

Q. You mean you don't have, with all of these files that you have on the table here, you don't have all of your files on this Engineering and Development Corporation matter?—A. I do not, no.

[1109] The COURT. Well, the witness has said that he doesn't recall preparing any papers in connection with it. Why not move on to something else?

By Mr. MARION:

Q. You never prepared any letter, did you, Congressman, containing any legal opinion or legal conclusions on this Apple Grove matter?—A. I do not recall. I do know that the first thing that came to my attention was the $100,000 escrow agreement which——

Q. Congressman, I don't think that is responsive to my question. My question was, you prepared no letter, did you containing any legal opinion or any legal conclusion?—A. I say, I do not recall of a letter. I could have done. I do know that I did considerable research, legal research on this matter, work with Mr. Robinson, and we had many hours of discussion, because it involved a $100,000 escrow account, and I would never approve legally the release of it.

Q. The party of interest in Engineering and Development Corporation was a man by the name of Albert Kastner, was it not?—A. That is true.

Q. Isn't it a fact you never talked to him about that particular loan?—A. I think he was in my office on one occasion.

Q. Was there discussion about this loan on that occasion?—A. If it was, it was only on the escrow account, and then Mr. Kastner also contacted me in respect to a second proposed loan or loan of the Saverian Development Corporation, which I prepared the charter for him.

Q. At how many conferences were you present where Mr. Kastner was present?—A. Very few, because my work was

entirely that of legal. I did nothing as to negotiations for the loans. My work was with Mr. Robinson.

Q. When you say very few, do you mean, two, one?—A. It could be one, two, three, I don't remember.

[1110] Q. So it could have been none?—A. No, I know that Mr. Kastner was in the office because I had the pleasure of meeting him one or more times.

Q. At that time there was no negotiation with respect to this loan, was there?—A. You are speaking of the Apple Grove?

Q. That is correct.—A. Only the escrow account, the $100,000.

Q. And you say you discussed that matter with Mr. Kastner in your office in Washington?—A. He was in the office, but I do not recall what discussion I had, but I had met Mr. Kastner either one or more times.

Q. Now, Congressman, in this particular transaction of the Apple Grove property, the transaction which you say you reviewed in August or September of 1960, there was only one mortgage in this particular transaction, although there were two mortgage notes?—A. That is true.

Q. Is that not correct?—A. That is true, aggregating $798,000.

Q. Could you have been in error. Congressman, when you told the Montgomery County Grand Jury that there were two mortgages in this particular transaction?—A. Well, it could be in error. There were two mortgage notes. They were secured by one mortgage.

Q. Let me read you your question and answer on page 10 of the Montgomery County transcript:

> Did you give any legal advice or were you involved in negotiations in regard to a certain mortgage from Engineering and Development Corporation of Maryland to the First Continental Savings and Loan Association in the amount of $798,000?
>
> Answer: As I stated there, that he asked for legal opinion from me dealing with whether that was properly drawn, what comments I had. There were two [1111] mortgages. One was, I believe, $659,120, the other for $139,100, making a total of $798,220.

As a matter of fact, there was only the one mortgage?—A. There was only the one mortgage to secure the two notes.

Q. Now, prior to your testimony, Congressman, isn't it a fact that in the last several months you have discussed the legal matters which you testified to on direct examination here about this particular Engineering and Development Corporation loan with Harry Adelberg of Baltimore?—A. Mr. Marion, I do not recall discussing this particular loan with Mr. Adelberg. I did not know Mr. Adelberg had any interest whatsoever in it.

Q. I am speaking now in the last several months prior to your testimony here.—A. Your question is on the Engineering and Development?

Q. About the legal matters to which you have testified on direct examination.—A. Will you tell me which legal matters?

Q. Your testimony involving the Engineering and Development Corporation loan, the $798,000 transaction.—A. I could have discussed it with him, but I don't know why I would, because I don't think he was connected in any way with it.

Q. Haven't you also discussed that transaction with Mr. Robinson prior to the time you testified?—A. I have discussed it with several trying to refresh my recollection and trying to be able to intelligently testify. Unfortunately, I had not reviewed my file, did not know the facts when I testified at the previous occasions.

Q. How many times did you discuss the matter with Mr. Robinson?—A. Oh, I don't know, but you can rest assured that I made quite an effort because my life is at stake here and my family, and I have been trying to get every possible conceivable evidence of what I had done in respect to these transactions.

[1112] Q. And you have in the file there, Congressman, the papers which were admitted into evidence involving the Engineering and Development Corporation matter?—A. Yes.

Q. Which ones?—A. I think they were 50-A through H, if I am not mistaken.

The COURT. Mr. Marion, if you will face the jury then the witness will hear you and the jury will hear you better.

By Mr. MARION:

Q. Congressman, is it not a fact that those papers which were offered into evidence involving the Engineering and Development Corporation Exhibits 50–A through H contain a number of penciled notations that you are handwriting?—A. That is true, and with pen, too.

Q. And is it not also a fact that those notations have been placed on those papers since this investigation began?—A. Mr.

Marion, I could not say. I know that when I testified I made some memorandums before the Grand Jury. Which ones I did or did not, I can't say.

Q. Look specifically, if you will, Congressman, at the loan agreement.—A. Yes.

Q. Which is Exhibit 50–A, Defendant's Exhibit 50–A.—A. Yes.

Q. Is it not a fact that all of the penciled notations on that document were placed on there after the beginning of this investigation?—A. As I say, I do not know. They could have been. I do not recall.

Q. You don't recall when you placed them on there?—A. No.

Q. They were placed on there for the purpose of enabling you to testify from that document, were they not?—A. Well, some of these notations were to save time from having to thumb through the different provisions because in this loan agreement I did not prepare, I did not nego- [1113] tiate it, I came into the picture to review it, and there were only about two provisions that I was asked to review legally.

Q. Would you deny, Congressman——

The COURT. Is the answer yes to Mr. Marion's question, with the explanation?

The WITNESS. I say, I just don't know.

By Mr. MARION:

Q. Congressman, you furnished to the Federal Bureau of Investigation in January of 1962 Thermo-fax copies of several legal documents which you said came from your file, did you not?—A. Yes.

Q. And included among those was a Thermo-Fax copy of that loan agreement which has been introduced into evidence as Defendant's Exhibit 50–A. I show you this Thermo-Fax copy and ask you if you cannot identify that as the Thermo-Fax which you gave to the Federal Bureau of Investigation?—A. Yes, it could be. I don't know. It could be.

Q. And is it not a fact that that Thermo-Fax copy of Defendant's Exhibit 50–A contains no penciled notations?—A. Well, not on the fact of it.

Q. Do you want to look through it page by page?—A. Yes, just a minute.

I was looking to see whether I had another copy. If that was given to the FBI by me, there is no notation on the front of that.

Q. You don't deny that this is the copy which you gave them?—A. I don't deny. I just didn't know whether I had another copy it was taken from.

Q. Let me borrow this for a minute.

Mr. MARION. I would like to offer the Thermo-Fax copy, Your Honor.

* * * * *

[1114] Q. Now, in your file there in front of you, Defendant Exhibit 50-D, do you now have that, which is a carbon copy of a note in the amount of $84,000-some odd?—A. I do.

Q. And that contains a penciled notation in your handwriting, does it not?—A. Well, yes. Just three or four words.

Q. And that was put on there after the investigation, was it not?—A. I imagine it is just to explain the note.

Q. Let me show you a thermofax and see if that would clarify your recollection in that regard?—A. Yes. I will tell you, I have just on here "Repay the balance for the land." It is for my own information.

Q. And that is a thermofax copy which you gave to the FBI?—A. I do not dispute that at all.

The COURT. You do not need to put it in, Mr. Johnson agrees that on 50-D the note was put on for the purposes of the case.

By Mr. MARION:

Q. Now, on the pledge agreement—Defendant Exhibit 50-E, there are marginal notations in your handwriting, is that not so?—A. Yes, very minor ones.

Q. That was also put on after the investigation?—A. It could be. Unless it is shown otherwise.

Q. That was put on after the investigation?—A. There are two notes.

Q. Congressman, is it not a fact that including your testimony on direct examination in this case, you have furnished four different explanations as to the recommendations which you say you made to Mr. Robinson about the revising of these particular Engineering and Development corporate loan papers?—A. You will have to tell me which they are. I do not recall.

Q. Let me. Among the thermofax papers turned over [1115] to the Federal Bureau of Investigation in January of 1962, was a carbon copy of a letter purportedly written on August 25, 1960 from Berlin, Maryland, by you to William L. Robinson. Is that

a thermofax which you delivered to the FBI?—A. It could be. I would not say. I do not say it is not.

Q. And was there an original letter?—A. I presume so. I do not have it.

Q. You do not have it?—A. I mean Mr. Robinson would have that.

Q. You do not have that, the office copy of the letter?—A. I do not know. I do not have it in this folder.

* * * * *

Q. This letter does state, does it not, that "after reviewing our conference, there is no doubt the loan agreement must be rewritten in conformance with Maryland Law"?—A. That is true. That was my recommendation which I made to Mr. Robinson. I do not know whether you want me to explain the reason why.

Q. That is what that letter says, is that correct?—A. Yes.

Q. And in your testimony before the Montgomery County Grand Jury on pages 10 and 11, you testified in answer to a question as to what legal opinion you gave Mr. Robinson:

> A. Well, I advised him that I felt the notes were not proper, that it should be spelled out in the notes what was set forth in the loan agreements, and that the loan agreements should be put on record.

A. That is also true.

Q. You advised him there, did you not, that the notes should be written to incorporate what was in the loan agreement, is that correct?

The COURT. He says he so testified.

[1116] By Mr. MARION:

Q. And before the Federal Grand Jury, Congressman, on pages 26 and 27, you testified, and I am reading from your answer at the bottom of page 26:

> In the loan agreement there was a problem of whether or not the mortgage and notes conform to Maryland Law. I reviewed them and found that they did not. That the notes did not incorporate the terms of the mortgages. And that they should be rewritten.
>
> Q. The notes and mortgages should be rewritten?—A. No, that the notes should be rewritten to conform with the wording of the mortgages.

That was your testimony there, was it not?—A. Yes. I made quite a number of suggestions and I went on to state, if you will read on, that I made rather detailed searches, legal searches, and I found it dealt with future advances which is another problem of this large loan.

Q. And finally, you testified here in this trial on direct examination——

The COURT. On page—page?

Mr. MARION. Page 3220.

> I did not prepare the mortgage. Not mortgage, it refers to the loan agreement under date of September 20, 1960. I had serious question as to whether that is proper notice to any creditor or parties dealing with this development. That the loan agreement should be filed or the mortgage rewritten so that the terms of the loan agreement, the important terms, would be embodied in the mortgage.

That was your testimony on direct examination?—A. Yes, that is true.

* * * * *

[1117] Q. And on the next page, completing an answer on the next page, you said:

> I merely said that I preferred to have the loan agreement recorded on the mortgage rewritten so that the terms would embody the loan agreement terms.

Is that correct?—A. Yes, I think that is true, and I found serious trouble with the entire Apple Grove loan.

Q. Now, isn't it a fact, Congressman, that neither the mortgage or the two notes or the loan agreement was rewritten by you or by anyone else?—A. It was not rewritten.

Q. And did you not, in fact, claim before the Federal Grand Jury to have revised the mortgage notes in that transaction?—A. I don't recall. I may have.

Q. Let me refresh your recollection. On page 149.

Mr. DOUB. What page are you referring to?

Mr. MARION. Pages 149, beginning on line 9.

> Did you ever prepare a mortgage note?—A. I revised a mortgage note for that Kastner in the Engineering and Construction. I had all of that because, as I stated in my previous testimony, these notes did not conform with the mortgages, and they all had to be revised.

By Mr. MARION:

Q. And as a matter of fact, Congressman, those mortgage notes were not revised, were they?—A. Well, I had recommended. I understood they had, but I do not know.

* * * * *

The CLERK. Take the stand, sir. You are still under oath.

Thereupon, THOMAS JOHNSON, a defendant, appearing as a witness in his own behalf, hav-[1118]ing been previously sworn, resumed his testimony further as follows:

CROSS EXAMINATION

By Mr. MARION:

Q. Congressman, when we had recessed last Wednesday, shortly before the recess, I had shown you Government's Exhibit 174 which is a thermofax copy which you supplied the FBI in January, 1962 of what purports to be a copy of your letter to Mr. Robinson of August 25, 1960. That letter, Congressman, purports to be written from Berlin, does it not?—A. Yes.

Q. And as a matter of fact, on August 25, 1960, you were not in Berlin, were you?—A. I do not know. I do not know. I found this in my file.

Q. Congressman, the Congress was then in special session in Washington, D.C. in the last two weeks of August, 1960, was it not?—A. It could have been. I was in and out of the District during that period.

Q. And on August 25, you were actually in Washington, were you not?—A. I say, I do not know. I was back and forth. It was a campaign year and I was in the District, I would say, three or four times a week.

Mr. MARION. Let me refresh your recollection, Congressman. I show you Defendant Johnson's Exhibit 16 which is a listing of telephone calls made from your office in Washington for the last several months of 1960, and I show you that portion which deals with the period ending August 31, 1960, and direct your attention to page four and ask if this does not indicate that you made several calls on your Washington telephone on August 25, 1960 from Washington, D.C.?—A. Yes, I see two but we are only about two and a half hours from Washington.

Q. As a matter of fact, there are three calls, are there not, on the 25th of August?—A. Yes, there are three calls.

[1119] Q. One of those is a night call, is it not?—A. I cannot tell.

Q. I thought you had translated this in your direct testimony. The notation at the bottom indicates an "N" where a night call is placed at night rates, does it not, and beside one of those calls on the 25th over in the righthand column there is a notation of an "N" which indicates does it not, that that call was placed at night from your Washington Office?—A. Show it to me. You may be right but, as I say, I do not see it.

Q. "Call from Johnson on the 25th to Salisbury, 8 minutes, night rate." Is that correct?—A. Yes, but all of the calls—that could have been Mr. Buarque or anyone calling.

Q. Whose name does it indicate as the person calling from there?—A. Well, "Johnson." But they are all "Johnson" on there.

Q. Now, Congressman, as I understood it, your testimony on direct stated that you had formed the Savarin Development Corporation in connection with—the organization of that corporation for a loan in November of 1960 in connection with the Green Meadows Apartment House Project, is that correct?

Mr. DOUB. He did not testify to that.

The WITNESS. May I have my file?

Mr. MARION. If I am wrong, will you refresh my recollection?

The WITNESS. It is my recollection it was in December, I was asked to prepare a Maryland charter, which I did.

By Mr. MARION:

Q. In connection—that was in connection, was it not, according to your direct testimony, with an application by the Savarin Development Corporation for a loan in connection with the Green Meadows Apartment House project?—A. That is right.

[1120] Q. And is it not a fact, Congressman, that only a few months ago when you testified before the Federal Grand Jury, you knew so little about the formation of that corporation and that particular loan application that you told the Grand Jury that this corporation—this new corporation you formed, was a part of the correction of some problem which existed in the Engineering and Development Loan Back [sic] in September of 1960?—A. I do not recall. I think the records speak for themselves and may I say, in answer, that when I was before the grand jury as I told you and told Mr. Tydings, I had not re-

viewed my file. It came at a time when we were at the closing days of Congress with day and night sessions, campaigning—I could very easily have given you little information on it.

But the records speak for themselves, which have been introduced in evidence.

Q. You had your legal files with you at the time you appeared before the Federal Grand Jury, did you not?—A. I think I had most but I had not reviewed them.

Q. As a matter of fact, when you testified about this very matter, you were referring to your files, were you not?—A. I may have referred but as I say, I had not really reviewed to the extent of knowing the full facts.

Q. Let me refresh your recollection, Congressman, from your Federal Grand Jury testimony, beginning on line 24 of page 27.

"Q. Who was Mr. Kastner?"

A. What page was that?

Q. Page 27.

Q. Who was Mr. Kastner?—A. He was the Engineering Development Corporation.

Q. He was the key promotor in the Engineering Development Corporation?—A. Yes. My meetings were, for the most part, with Mr. Robinson. [1121] Mr. Robinson felt the money should be released. He said in Florida they could do it. I said in Maryland they could not. I would never approve. As a result, the $100,000 was never distributed. Another thing——

Q. Do you recall where the meetings were?—A. I think probably most of them were right in my office in Washington.

Q. Where were the meetings when Mr. Kastner was present?—A. I do not know on that. Possibly at the office. I do not remember.

Q. What was Mr. Kastner's position about the $100,000 escrow? Did he agree with you or fight you on that, or what?—A. The pressure was on Mr. Robinson between Kastner and he. And I did not get into that directly. Most of mine was with Robinson. Then it came to the point——

Q. Was Mr. Robinson representing Mr. Kastner at the time or was Mr. Robinson representing the lending institution?—A. The lending institution, yes.

Q. Did Mr. Kastner have any other attorney with him?—A. Not to my knowledge.

Q. Just Mr. Kastner alone and you and Mr. Robinson on the other side?—A. As far as I can recall.

Q. Now, ——. —A. We ran into another situation. There was to be a guarantee of this loan by three individuals, Albert——

Q. Let me ask you who drafted the loan agreement?—A. Mr. Robinson.

Q. Did you show it to any other attorneys?—A. I did not.

Q. You did not show it to Mr. Adelberg or anyone like that?—A. Not this particular one, no. Let me qualify that. Later we got a corporation which was prepared in the Baltimore office in this same——

[1122] Q. But you did not incorporate the Engineering Development Corporation?—A. No, what had happened was this. I was leading up to this. As further guarantee to the loan three individuals were to guarantee the loan. The loan carried more than the 6 per cent rate of interest. I questioned the legality of whether or not that would be binding. They asked what could be done. I said, if you had a corporation and had assets, that that corporation could guarantee. I was instructed to prepare a corporation to be incorporating these three individuals.

Q. Who incorporated them or who prepared it?—A. That was done in the Baltimore office, if I recall.

Q. The Baltimore office of——.—A. Mr. Adelberg.

Q. Harry Adelberg?—A. Yes, but it was never filed for some reason.

And you continued there, Congressman.

The COURT. What is the question?

Mr. MARION. I will stop at that point and ask the Congressman this question:

By Mr. MARION:

Q. Does that testimony not represent your testimony before the Federal Grand Jury?—A. Yes, that was my testimony.

Q. And continuing at that point, Congressman:

Q. Congressman, you have been referring to a file of papers which you brought with you. Would you identify for the grand jury and the reporter what that file of

papers is?—A. I have before me a portion of my file dealing with various transactions and legal matters dealing with various loans.

Q. Does this file, or did you bring this file in response to my request to bring all legal papers which pertained to the First Continental Savings and Loan, [1123] the First Colony Savings and Loan and Charles County Land Company and Leisure City?—A. Yes.

Q. Is this the file of papers which you permitted the FBI to make photostatic copies of or not?—A. I think there are some additional ones in there.

Q. There are some additional ones?—A. Yes.

Q. We have papers which you gave the FBI; could you show us the additional ones there?—A. I will have to go over them because——

Q. Are there many?—A. I have quite a number in here and I do not recall what was filed because, on this Engineering Development Corporation, I suspect there are 75 or 100 pages.

Q. Is this one complete file here that you have? Is this a complete file?—A. Well, no, it is not complete because some of it is in Baltimore, too, which I did not get.

Q. In other words, it is not complete now?—A. No.

Q. And the papers which you gave to the FBI were not complete either, is that right?—A. Well, it was not complete. No, all of them were not there.

Q. Were all of the important ones there?—A. I think all of the important papers were.

Q. And all of the important correspondence?—A. I think so, yes.

Was that your testimony?—A. It was.

Q. Congressman, is it not further a fact that you never mentioned in your prepared statement or statements to the FBI, you never mentioned before the Montgomery County Grand Jury and you never mentioned before the Federal Grand Jury the name of the Green Meadows Apartment House loan or the name of Savarin Development Corporation?—A. I think it is true but in [1124] reviewing my files, I found the papers. They are in evidence and they speak for themselves.

Q. And is it not also a fact that you never gave any papers relating to the Savarin Development Corporation to the FBI

when they came to your office in January of 1962?—A. Not to my knowledge. I do not think they asked for them.

Q. Specifically, Congressman, I show you Defendant Johnson's Exhibit 50-G which is a clipped file of papers relating to the Savarin Development application for a loan, and ask you whether or not it is true that you gave none of those papers to the FBI?—A. That is right.

Q. Where did you get those papers from before you testified here in Court?—A. I found them in one of the files.

Q. In one of whose files?—A. Presumably on the Engineering and Development Company.

Q. In whose office?—A. I think my office, or Mr. Robinson. I do not know which.

Q. Which office did you find them?—A. I say I do not know. But the other papers that I have in evidence giving the minutes and so forth were in my own file.

Q. You could have gotten that from Mr. Robinson, is that not correct?—A. I could have.

Q. Congressman, is it not further a fact that never, prior to your direct testimony in this case, did you indicate or testify before either the Montgomery County or Federal Grand Jury that you had performed any legal work for Mr. Robinson or for either First Continental or First Colony Savings and Loan after the Engineering and Development Corporation matter in September of 1960 until Mr. Robinson brought the Cassell matter to your attention in February of 1961?—A. I think that is true.

Q. As a matter of fact, Congressman, you even told the Attorney General of the State of Maryland, the Honorable Thomas B. Finan, that you personally, entered the [1125] legal picture of this entire matter when Congressman Boykin came on the scene and then only in connection with Congressman Boykin's real estate holdings, is that not correct?

* * * * *

Q. Did you not tell the Honorable Thomas B. Finan, Attorney General of the State of Maryland, that you personally, entered the entire legal picture in this matter when Congressman Boykin came on the scene and then only in connection with his real estate holdings?—A. I do not recall the conversation but certainly the records speak for themselves, the papers and so forth.

The COURT. Do you want to suggest when and where, Mr. Marion? It might refresh his recollection.

By Mr. MARION:

Q. Congressman, I show you what purports to be a two page letter with two attachments, apparently on your stationery to the Honorable Thomas B. Finan and ask you if that is your signature on page 2?

Mr. DOUB. What is the date of that?

Mr. MARION. It bears the date of January 10, 1962.—A. Yes, that is my signature.

* * * * *

Mr. MARION. Members of the Jury, the portion of the transcript of hearing which is enclosed as an attachment to the letter reads as follows:

> Now, if Your Honor please, we also find that Mr. Edlin, having had certain legal difficulties, has seen fit to use the Association's sums and funds to pay for his legal expenses and we are able to show that the Association has so far in 1961 on, an account called "Legal Services—Special," paid out a sum of $61,488.
>
> Now, part of that money, Your Honor, has been [1126] paid to a gentleman named Mr. Robinson who we have just advised you is a vice president of this association, and in addition, certain of these sums have been paid to a firm of Johnson & Johnson, to L. Caudle, Lamar Caudle, and others who have serviced Mr. Edlin.

Now, the letter is on the letterhead of the Congress of the United States, House of Representatives, letterhead of Thomas F. Johnson. It is addressed to the Honorable Thomas B. Finan, State Law Department, Mathieson Building, Baltimore, Maryland.

> DEAR TOM:
>
> I cannot tell you how unjust and incorrect were the remarks of your office at the recent hearing in Montgomery County, dealing with the First Continental Savings and Loan Association. Attached is a copy of that portion of the transcript which by innuendo my firm is supposed, in some vague way, to have been engaged in some nefarious dealing with the association and especially with one J. Kenneth Edlin.

I personally entered the picture of this entire situation at the request of my good friend and colleague, Congressman Frank Boykin. In connection with his real estate holdings, comprising some 13,000 acres, my firm and other legal associates were engaged to assist in some of the complex legal ramifications. Suffice to say, my firm acted as counsel for two land corporations which had been founded through the law office. For the work performed over a period of time, the law firm of course received nominal legal fees, and by communications in our files, these fees together with engineering and other costs, were to be paid from an escrow account at First Continental secured by a first mortgage on portions of the real estate. As I found the legal work required of my firm consumed more time than I could spare from my Congressional duties, I turned over a large portion of the work to attorneys in Virginia and Maryland, compensating them from the fees [1127] that had been paid my firm from the escrow accounts. Knowing that the subject matter is a political football in our State, certainly, you should have contacted me, as you must have known there was a proper explanation.

Then next, the uncalled publicity emanating from our Insurance Commissioner, Mr. Sears, should have told the press that the one or two meetings I had with him were perhaps a year or more ago, and that the case had been referred to our office by a Chicago attorney. He should have further stated that when he advised that the Life Company in Illinois could not qualify under the grandfather clause, I so notified clients and the matter was closed. The one or two conferences with the Commissioner were the beginning and the ending of the entire transaction, and no fee ever received.

Naturally, the situation greatly disturbed me, and I have no choice but to take the case directly to the people. At an early date I hope to have television time, as I feel the people of the Eastern Shore are entitled to know the precise circumstances under which I had any dealings with the parties mentioned. You may be as-

sured that on these radio talks and television speeches and other releases, I shall continue to fight as a loyal Democrat.

With kind personal regards, I am

Sincerely yours,

Tom

[S] THOMAS F. JOHNSON, M.C.

* * * * *

By Mr. MARION:

Q. Now, Congressman, it is true, it is not, that the Cassell matter was first referred to you by Mr. Robinson's letter [1128] to you of February 3, 1961 which has been introduced in evidence.—A. That is true, and I think the jury should understand more the explanation of that letter if I may be permitted, Your Honor, to give it.

Q. My question is as to the time the matter was referred to you?—A. The Cassell, in February.

Q. Yes, and——

* * * * *

By Mr. MARION:

Q. Wasn't the Engineering and Development Corporation a First Continental Loan, sir?—A. I think it is a participating loan but Mr. Robinson is the one who, at that time gave the retainer. I had one retainer during the year 1960.

Q. Now, do you know whether the Engineering and Development Corporation loan was a loan made by First Continental or not?—A. I have to refer to my file on that.

Q. Do you know independently of your reference to your files?—A. No, because, as I told you, the Apple Grove I did not participate in that only after it was made.

Q. Now, you said, Congressman, when I asked you a question about Cassell a moment ago——.—A. That is true, February, 1961.

Q. The Cassell matter was referred to you in February of 1961?—A. Yes.

Q. And you testified also, I believe, that the monthly retainer arrangement with Mr. Edlin and Mr. Robinson of $800 a month had been agreed upon in a conference in early January of 1961, at which time the Dranow $100,000 note was discussed. Is that your testimony?—A. That is true.

Q. Congressman, is it not a fact that in your prepared statement of January 23, 1962, you stated that the $800 a [1129] month retainer arrangement was agreed upon at the time Mr. Robinson brought you the Cassell matter, and I will show you the paragraph at the top of page four and ask if that refreshes your recollection?—A. Which statement is this—I have so many.

Q. This is your prepared statement of January 23, 1962 which was given to the FBI on that date.—A. Yes, I refer here that in early 1961 the Cassell matter was referred to me. I also mention about Mr. Robinson agreeing to the monthly sum of $800.

Q. At the time he brought the Cassell matter to your office?—A. You could infer but it is true this is not the correct situation if it is that inference, because that was agreed upon in January.

Q. Is that statement in that letter incorrect, Congressman?—A. Well, if the inference is drawn, as you drew it, it is not correct.

Q. And that statement which I just showed to you, the paragraph in your prepared statement read as follows, does it not:

> In early 1961 Mr. Robinson conferred with me in respect to the A. I. Cassell Land Corporation Loan involving hundreds of thousands of dollars, and a rather complicated transaction. To further complicate matters, a former Contractor by the name of H. B. Humphreys had also filed of record a lien on the entire tract of land which clouded further sales. Mr. Robinson brought the file to my office and asked in addition to the aforesaid lien, to review all of the mortgages. As this entailed several week's work Mr. Robinson suggested that he pay the law firm on a month-to-month basis and the sum of $800 was agreed upon. It is interesting to note that a review of the Cassell Mortgages disclosed that some $900,000 in mortgages were defective under Maryland law and new indentures had to be prepared to correct the mistakes. The arrangement of monthly legal services paid by Mr. [1130] Robinson as attorney continued for some four months and covered not only the Engineering and Construction Company-Cassell matter, but legal work on the Desser & Garfield transaction.

A. And many more which I did not mention.

• • • • •

Q. I show you Government Exhibit 61 which is a check to the order of Johnson & Johnson signed by W. L. Robinson, dated January 7, 1961, and ask you to state where you received that?—A. To the best of my recollection in Washington.

Q. And how did you receive it?—A. I do not know.

Q. Do you recall whether or not it was handed to you personally, or whether it came in the mail?—A. I do not recall. But I did receive it and deposited it to my legal account.

Q. From whom did you receive it?—A. I presume, Mr. Robinson.

Q. Do you recall whether or not there was any covering letter with that?—A. I do not recall.

The COURT. What number is that, is that a Government Exhibit?

Mr. MARION. Government Exhibit 61.

By Mr. MARION:

Q. I show you Government Exhibit 75 which is a check drawn on the account of W. L. Robinson, payable to the order of Johnson & Johnson, dated February 2, 1961 and ask you where you were you received that check?—A. In Washington.

Q. From whom did you receive it?—A. Mr. Robinson.

Q. Was that delivered to you, personally, or was that mailed to you?—A. I would not know that, one or the other.

[1131] Q. It came to your Congressional Office in Washington?—A. Yes, I received it in Washington.

Q. I show you Government Exhibit 78 which is a check drawn on the account of W. L. Robinson to the order of Johnson & Johnson, dated March 6, 1961 and ask you where you received that check?—A. In Washington and that is as the others.

Q. From whom did you receive it?—A. Mr. Robinson.

Q. Do you recall whether he handed that to you, personally, or mailed it to you?—A. I do not.

Q. I show you Government Exhibit 62 which is a check drawn on the account of W. L. Robinson to the order of Johnson & Johnson dated March 31, 1961 and ask you where you received that?—A. In Washington.

Q. From whom did you receive that?—A. Mr. Robinson.

Q. Was that hand delivered to you or mailed to you?—A. That I do not recall.

Q. Let me show you defendant Johnson Exhibit 57 which is a letter from Mr. Robinson, which purports to be mailed to Berlin, Maryland, and ask you if that refreshes your recollection and that that check was actually received by you in Berlin?—A. No, it does not. I do not know whether or not this was forwarded to me in Washington, sir.

Q. On March 31, 1961, were you not on the Eastern Shore?—A. I have no idea where I was on March 31.

Q. Wasn't this the time you testified that you had to go down to the District and, therefore, could not keep an appointment with Mr. Kennedy on the Thursday following March 25?—A. As I say, I would not recall.

Q. Weren't you down in Berlin for the Easter Recess at that time?

* * * * *

Q. Now, you testified, Congressman, as I understand, did you not, that upon receipt of the letter of Feb-[1132]ruary 3, 1961 the letter which first transmitted to you the Cassell loan papers, that you began working on the Cassell loan which involved some $1,600,000, is that correct?—A. Originally it involved that but at the time it was referred to me, I think it was some $900,000 that was involved.

Q. As a matter of fact, that letter of February 3, 1961 enclosed to you proposed loan agreement in the amount of $20,000?—A. Yes, I testified on direct examination. That dealt with the H. B. Humphreys who had a mechanic's lien on the entire project, and they wanted to lift the lien. It was at that time that it came to my knowledge about the other mortgages.

Q. Was it at the time you received that letter, or at some later time?—A. Well, it was during the time I was working on the mechanic's lien.

Q. And I think you testified, did you not, that it was during this time that you had occasion to see the form of the Cassell mortgage, the printed form of the mortgage?—A. Yes.

Q. As a matter of fact, Congressman, you knew so little about these Cassell mortgages that when you testified before the Montgomery County Grand Jury, you had no idea how many there were, nor how many had to be corrected, is that not so?—A. I do not know. If you will let me know what the testimony is.

Q. Let me refresh your recollection.

From page 12 of the Montgomery County Grand Jury testimony:

> Q. After August 1960, when again did you have any dealings from legal standpoint with Mr. Robinson and particularly Mr. Edlin?—A. They continued with Mr. Robinson. He brought in a very controversial loan dealing with A. I. Cassell Land Company, and under date of February 3, 1961 he addressed a communication and it is rather long, but it says "Enclosed copy [1133] of loan agreements on A. I. Cassell Land Corporation, together with copies of mortgages." I think it involved some three or four hundred mortgages. No more than that. Probably six hundred mortgages and he says, "I would appreciate your opinion on these documents at your earliest possible convenience." The amount involved was some $1,600,000. I made an examination, found that approximately one half of the mortgages were defective, involving some $700,000.

Now, is that your testimony before the Montgomery County Grand Jury?—A. Yes.

Q. And, as a matter of fact, Congressman, there were some 311 mortgages, were there not?—A. To be exact, I think it was 305, as I understand, 311 but 305 were what ultimately became involved.

Q. And there were 305 printed mortgages which were defective, is that correct?—A. Yes.

Q. And six were correct, of the total 311?—A. I do not recall that now.

Q. Now, do I understand from your testimony, Congressman, that your review of the Cassell mortgages was a portion of the work which you did as part of your $800-a-month retainer during the months of January through April of 1961?—A. That is correct.

Q. Is it not a fact that at the time you were performing this so-called review of the Cassell mortgages, you could not even state whether Mr. Robinson was representing the lending institution which was First Colony, or the borrower, Mr. Cassell?—A. Well, I do not think I call now because he was trying to clear for both parties.

Q. You did not know whether Mr. Robinson was representing Mr. Cassell or First Colony?—A. That is true.

Q. And you did not know, when you checked the mortgages, whether you were looking at them to protect the [1134] lending institution or to protect the borrower, is that correct?—A. I presume for both.

Q. You were acting on both sides of the transaction?—A. I presume both benefited by the correction.

Q. All right. Who were you receiving the $800 a month from?—A. Mr. Robinson—it came from him.

Q. Who did you understand was reimbursing him?—A. I never knew because he had formerly told me that it depended on usually the loans, who participated in the loans and that was arranged, presumably by Mr. Robinson.

Q. Did he ever tell you he represented Mr. Cassell, Congressman?—A. Not to my knowledge.

Q. Did he ever tell you that Mr. Cassell was reimbursing him for any of these funds paid to you?—A. No, I did not ask him.

Q. You knew, as a matter of fact, that they were being reimbursed by the Savings and Loan Association, did you not?—A. I presume that is where he was getting his reimbursement.

Q. You knew, as a matter of fact, did you not, that Mr. Robinson was representing the First Colony Savings and Loan Association?—A. Yes.

Q. I also believe you testified in this connection, Congressman, that after you had discussed these Cassell mortgages with Mr. Harry Adelberg of Baltimore, the two of you agreed that one confirmatory mortgage would suffice to correct the absent affidavit.

Was that your testimony?—A. Which testimony is that?

Q. Your testimony before this jury.—A. It could have been. I do not recall.

Q. Well, do you want me to refresh your recollection?—A. I would say it is.

Q. Is your testimony now any different from what I just [1135] indicated?—A. No. I say, as to the Cassell matter, ultimately the mortgages were brought to Baltimore to review, to be reviewed and there was a confirmatory mortgage.

Mr. Robinson was rather insistent that it be a simple amendment. At first there, we thought we were going to have to rewrite all the mortgages but ultimately there was a confirmatory mortgage.

Q. As a matter of fact, Congressman, did you not tell the

Montgomery County Grand Jury that you did, in fact, rewrite all of these mortgages?—A. Well, if I did, I inferred it was through a confirmatory mortgage.

Q. I am referring again to page 12 of your Montgomery County Grand Jury testimony, and I will pick up again where I left off a moment ago.

> I made an examination and found that approximately one half of the mortgages were defective involving some $700,000.
>
> Q. In what way were they defective?—A. They had not complied with the Maryland requirements so we rewrote those.

Was that your testimony before the Montgomery County Grand Jury?—A. Yes, it was and I say again that we did by confirmation mortgage.

Q. But, as a matter of fact, those mortgages were never rewritten individually, were they?—A. Not individually, no.

Q. So, you did not rewrite the mortgages, is that not so?—A. Not individually, but there was a rewrite by a confirmatory mortgage.

Q. Did you not, in your prepared statement of January 23, 1962, state that new indentures—a plural word—had to be prepared to correct this defect in these 305 mortgages?—A. As far as I know, if you say it is correct; I do not remember.

[1136] Q. I refer again to a sentence I previously read in the top paragraph on page 4, Congressman;

> It is interesting to note that a review of the Cassell Mortgages disclosed that some $900,000 in mortgages were defective under Maryland law, and new indentures had to be prepared to correct the mistakes.

Was that your prepared statement?—A. Yes, it was.

Q. Congressman, the confirmatory mortgage, the one confirmatory mortgage which was in fact prepared, was prepared, was it not, by Mr. Harry Adelberg?—A. I would say that it was prepared by Mr. Adelberg after, possibly, considerable conference.

Q. Isn't that what you previously testified here too that it was prepared by Mr. Adelberg?—A. I presume I did, I do not recall.

Q. Do you know when it was prepared by Mr. Adelberg?—A. I do not. It was in the spring of 1961.

Q. And do you know when it was executed?—A. I do not recall the date.

Q. And do you know when it was recorded?—A. I do not.

Q. As a matter of fact, Congressman, is it not true that it was prepared by Mr. Adelberg in May of 1961 and that when it was prepared, it was never fully executed and it was never recorded?—A. I do not know.

Q. Is it not also a fact, Congressman, that you never wrote an answering letter in answer to Mr. Robinson's letter to you of February 3, 1961?—A. Well, I think the answer, yes, that it was the work in the preparation of the confirmatory, but my work was actually a great degree on the H. B. Humphreys matter, in which I prepared certain papers on that.

[1137] Q. But you never, as I understand your answer, wrote him a letter in answer to that letter of February 3?—A. Whether a letter—I do not recall a letter.

Q. Now, you did testify on your direct examination at some length about the Humphreys' mechanic's lien and the problems which you say you encountered while dealing with that mechanic's lien. At that time you also pointed out, am I not correct, that you were working to protect the lending institution?—A. That is true and I must correct the last statement. I recall I did write to Mr. Robinson because he insisted on a letter respecting the mortgages, whether they were a prior first lien on the properties. That is dealing with the $20,000 loan.

Q. Where is your copy of that letter?—A. I do not have—as I stated on direct there I did not have my copy.

But he insisted on a letter.

Q. You never had a copy of that letter, did you, in January of 1962, when you gave copies of the other letters to the FBI?—A. As I say, I do not have the copy.

Q. All right, now, in connection with the Humphreys mechanic's lien, Congressman, did you not indicate that your work in connection with that was to protect the lending institution?—A. Primarily, yes.

Q. As a matter of fact, you testified that you were concerned that your work protect the lending institutions' advertising policy, did you not?—A. That is true.

Q. Now, Congressman, when you were supposed to be working on this Humphreys' mechanic's lien, is it not a fact that you never knew whether you were representing the lender, First Colony, or the borrower, Mr. Cassell?—A. I would say that

primarily the lender, but Mr. Cassell, naturally benefited. It was for his benefit, likewise.

Q. Didn't you tell the Federal Grand Jury that you even advised Mr. Robinson what would be a proper settlement of that mechanic's lien without ever knowing on [1138] whose behalf you were acting?—A. I advised Mr. Robinson, yes, on the settlement.

Q. And, did you not also say you had no idea as to whose behalf you were acting while you were supposed to be doing this work?—A. Possibly so.

* * * * *

The WITNESS. May I say that primarily it was the lending institution. I was not contacted by Mr. Cassell but certainly Mr. Cassell's interest was protected by the work done regarding the mechanic's lien.

* * * * *

Mr. MARION. I am referring to page 36 and page 37 of the testimony of Mr. Johnson before the Federal Grand Jury.

By Mr. MARION:

Q. Congressman, let me ask you if this refreshes your recollection, beginning at the top of page 36:

> Now, in addition to that, there was a difficulty that arose that a concern by the name of Humphreys, H. V. Humphreys & Son, filed a mechanics' lien against this development.
>
> Q. Who would worry about that, the lender or——.—A. Mr. Robinson asked me to check and let him know what the Maryland law was on mechanic's liens.
>
> Q. On whether or not it was valid?—A. Yes, and on how to dispose of the mechanics' lien.
>
> Q. In order to protect whom?—A. To protect all parties, I guess. Mr. Cassell and the lending institution.
>
> Q. The lending institution, the First Colony Savings and Loan?—A. Presumably all.
>
> Q. You still, throughout this entire transaction, though, you did not realize whether you were repre-[1139]senting the borrower or the lender?—A. No. Mr. Robinson is the one that gave me instructions. That was the understanding.
>
> Q. Did you have any idea or did you think it might have been the First Colony Savings and Loan or not?—

A. I did not even think about it because Mr. Robinson is the one that was paying me personally for it there.

And then at the bottom of page 37, beginning with line 13.

Now, on this Cassell, the complication arose on this mechanics' lien. It was $19,000 and had stopped the sale of all of the lots in the area. And there was quite a lot of detail work there as to lifting this mechanics' lien, as to posting a bond and to negotiate a settlement, which was finally negotiated to compromise.

Q. Did you participate in the negotiation?—A. Not in the negotiation but I advised him what I thought would be a proper settlement.

Q. You advised whom?—A. Mr. Robinson.

Q. Acting for whom?—A. Well, again I do not know.

Now, was that your testimony?—A. That is my testimony and still is.

Q. Now, throughout the course of this transaction, Congressman, you never had any contact with this Mr. Humphreys, did you?—A. Not personally, no.

Q. You never had any contact with his attorney, Mr. Perry Bowen of Calvert County?—A. That is true.

Q. You never had any contact with Mr. Cassell, did you?—A. I did not.

Q. You never had any contact with Mr. Cassell's Attorney, did you?—A. Which attorney?

[1140] Q. Do you know Mr. Cassell's attorney in this transaction?—A. No, I didn't. That is why I ask.

Q. As far as you know, you never had any contact with any attorney representing Mr. Cassell, did you?—A. I never knew he had one.

Q. Congressman, you testified here on direct examination that you arranged a meeting between Mr. Edlin and Congressman Boykin on January 6, 1961?—A. That is true.

Q. Is it not a fact that you told the grand jury—the Federal Grand Jury, in September of 1962, that this meeting with Mr. Edlin and Congressman Boykin had occurred in August of 1960?—A. If I did, it would not be correct because reviewing my files, I found a telegram which gave me the correct date as to the meeting.

Q. And didn't you also review your files before you made the statement to the Federal Grand Jury that it had been in August of 1960?—A. I did not.

Q. Let me refresh your recollection. Beginning on page 39 of the Federal Grand Jury transcript, page 39.—A. Yes.

Q. (Reading).

Q. What was the purpose of the discussions or meetings? What were you doing?—A. This brings in the development in Southern Maryland which is some 8,000 acres. Congressman Boykin had an interest in the mortgage on the property of $5,900,000, or approximately $6 million which had been given by Desser & Garfield. They were to develop this land in Southern Maryland. Mr. Desser had trouble in getting money to finance the development. He had spent, according to his estimates, several hundred thousands of dollars but (3903) he needed more money. So, Congressman Boykin thought that this firm of First Continental——

Q. First Continental Savings and Loan.—A. Yes—would be in a position to loan some money for this development.

[1141] Q. Did Congressman Boykin tell you this?—A. Yes, if I may say, because I reviewed my files on it that during 1960, Congressman Frank Boykin of Alabama—and, by the way, I hope that he will come to visit with you, because he is probably one of the most entertaining and delightful ones that we have in Congress. He is in the late 70's and is quite a character. He discussed with me the many new developments near Washington and told me he was personally interested in some 8,000 acres at Waldorf which is in Southern Maryland. That the land was under development by a firm known as Desser & Garfield, but the company was having financing difficulties.

Q. You are reading from a statement now. Is that a statement which you gave to the FBI?—A. No, this is something I just prepared because I enlarged on what I gave the FBI.

Q. This is another statement?—A. Yes. It appeared that Congressman Boykin had an interest in the $6 million mortgage on the large tract and was anxious to have Desser & Garfield continue with the development.

Congressman Boykin asked if I had any suggestions for financing, as it would be a great boon to Maryland.

I told Congressman Boykin that the only possible

source I knew for funds would be the same group who were under negotiation with the Assateague Island Bridge Company in my district to loan $1,700,000 for a bridge, sewer and water system.

Congressman Boykin suggested that I arrange a meeting with the parties and that was Mr. Robinson and Mr. Kenneth Edlin to discuss the matter.

Mr. Robinson was contacted and a meeting was arranged with Mr. Edlin attending.

Q. When was this, approximately?—A. This—I [1142] could not remember the exact date but it seems to me it was during early 1960. I could be off.

Q. 1960 was——.—A. Not early but probably some time.

Q. Was it after the special session of Congress which convened after the Democratic Convention in 1960, do you recall, or was it during that special session which took place during August of 1960?—A. I have an idea possibly it was around August of 1960.

Q. It could have been during that special session?—A. It could have been because I could not remember the time on that. Mr. Edlin advised that he acted as underwriter for several lending institutions including First Continental and that——

Was that your testimony before the grand jury?—A. That was mine. As I stated at the time I had not found the copy of the telegram which has been introduced into evidence which gives the date January, 1961, but what I stated here was my testimony not having the recollection of the telegram.

* * * * *

Q. Congressman, I show you defendant Johnson's exhibit 61, which you produced here at this trial, which purports to be a memorandum pertaining to the Desser negotiation. And I ask you to state where you got that memorandum which you now have in your hand?—A. I do not know whether Mr. Lykes Boykin or Mr. Robinson or who gave it to me, but it deals with the estimated, original estimated cost for the development of the Desser and Garfield.

Q. And is it not a fact that the notation in your penciled handwriting in the upper lefthand corner was put on that memorandum after this investigation had begun?—A. There was a notation and I have erased it.

Q. In other words, that was not there when you first received that document?—A. Presumably not but I had erased what was on here.

[1143] Q. When did you place the notation on there which you say you erased?—A. I would not have any idea.

Q. Was it within the last several months?—A. It could have been.

Q. You do not recall?—A. No.

Q. Possibly it was in the last several months?—A. It could have been. I say I do not know.

Q. As a matter of fact, you never gave a copy of that document to the FBI?—A. No.

Q. I show you defendant Johnson exhibit 62, which contains an original letter from Mr. Robinson to you dated February 6, 1961, a carbon copy of another letter, plus what you described, I believe, as the first draft of the Desser & Garfield loan agreement. Now, Congressman, First of all, my question to you is, isn't it a fact that you never wrote an answering letter to Mr. Robinson with respect to that letter of February 6, 1961?—A. I did not. There was no occasion to.

Q. And I believe you testified, did you not, that you did not prepare the draft of the loan agreement which is attached now to that letter?—A. Yes.

Q. Tell me—by referring to that draft, whose penciled notations appear on that draft?—A. There are several different writings and I could not identify whose it is. If I am not mistaken, some of it is the secretary from Mr. Robinson, the secretary that Mr. Robinson had from Florida.

Q. Is any of the writing your writing?—A. Very little.

Q. Let me direct your attention to the first page of the loan agreement and I ask you whose penciled notation this appears to be on the lefthand side in the margin on the first page?—A. That is mine.

Q. It says something about a plat to be filed with the agreement, does it not?—A. Yes.

[1144] Q. Below that in the same margin there is some additional penciled notations?—A. Which I cannot read. It is mine, but I cannot read it.

Q. In your handwriting?—A. Yes.

Q. Now, the penned notations on the first page are not in your handwriting, is that correct?—A. No, they are either—I think the Secretary who was working on it. Let me see.

Q. With the stapled addition on page 2 is that word in your handwriting, the word "Add?"—A. I am not sure it is. It could be.

Q. And on page 3 near the top, the words "not necessary." Is that in your handwriting?—A. Yes.

Q. And someone has crossed out some penned notations to the left of the words "not necessary." Is that correct?—A. Yes.

Q. Is not that in Mr. Lamar Caudle's handwriting?—A. It could be.

Q. And then there are some other penned notations which you say appear to be in the handwriting of Mr. Robinson's secretary?—A. I think that is his secretary.

Q. In the lower lefthand corner there is a notation "The Bridle Path" which is in your handwriting, is it not?—A. Yes.

Q. And then on page four there appear to be some penned notations which have been crossed out?—A. Yes.

Q. Is it not a fact that that is in Mr. Lamar Caudle's handwriting?—A. It is, as far as I can recall.

Q. On page six, there are some more penned handwriting which has been crossed out with a pencil. Is it not a fact that is in Mr. Caudle's handwriting?—A. It could be. I do not know his writing at all.

Q. And you have some penciled notations of your own, [1145] do you not, in the lower lefthand corner of page six?—A. Yes, which I cannot read.

Q. On page seven, there are several penciled notations which are in your handwriting, is that correct?—A. That is right.

Q. And on page eight there are penciled notations in the lefthand margin which are in your handwriting?—A. Yes.

Q. On page nine there is the word "written" which is in your handwriting, is that so?—A. Yes.

Q. Also some penned notations which are not in your handwriting?—A. Yes.

Q. On page 10 there is the penned notation which is not in your handwriting and the penciled notation which is in your handwriting?—A. Yes.

Q. On page 11, there is a penciled notation which is in your handwriting, is that correct?—A. Yes.

Q. On page 12 near the lower part of the lefthand margin there is a penciled notation which is in your handwriting?—A. Yes.

Q. And on the side, paragraph 36 there is a word, is that in your handwriting?—A. Yes.

Q. That penciled notation?—A. Yes.

Q. Aside from that one, from pages 13 to the end, none of the notations are in your handwriting?—A. No.

Q. And is it not also a fact that each and every one of the penciled notations which now appear on this document in your handwriting were placed on this exhibit after this investigation was begun?—A. I cannot state on that.

I would not know whether to refresh my recollection or made at the time.

Q. You do not recall whether or not they were put on at the time or whether you put them on prior to your testimony in this case?—A. No, I would not know.

[1146] Q. Now, Congressman, you never gave a copy of that document to the FBI, did you?—A. I do not have a list of what was given them.

Q. Can you state where you got that loan agreement which is now attached to that letter, before you produced it here at the trial?—A. No, I presume it is with the letter there of which he was sending me a copy.

Q. Didn't you get that from Mr. Robinson before this trial?—A. Not to my recollection.

Q. It is possible you could have?—A. It could have. I had some of his records to refresh my recollection.

Q. He turned over a number of documents to you, did he not?—A. Some documents, but his file was not as complete as mine.

Q. But you never gave a copy of that one to the FBI in January of 1962?—A. I would not know that.

Q. Now, you also testified on direct examination that the draft which appears, attached to the letter of February 6, 1961, which has been marked as Defendant Johnson exhibit 62, was the first rough draft of that loan agreement?—A. Yes.

Q. That was your testimony?—A. Yes.

Q. Then on your direct testimony, you identified a photostatic copy which has been identified and introduced as Defendant Johnson exhibit 63 and your testimony on direct examination was, was it not, that there were changes made in Defendant's exhibit 62 and those changes resulted in the rewrite of that loan agreement which turned out to be defendant's 63, was that your testimony?—A. If it was, it was not clear, because

exhibit 63 is really a copy of the exhibit 62. There was a final rewrite which I did not have the number of.

Q. So your testimony, when you testified under oath, that there were some changes made in 63 that appeared in 63 and that when 63 was a rewrite of 62, that testimony [1147] was not correct, was it?—A. I would not say it was incorrect. It seems to me there were some minor changes but for the most part, it is a clean reproduction of what we had from the original loan agreement.

Q. Congressman, is it not a fact that Defendant Exhibit 63 is actually a photostatic copy of defendant's 62 and that there are no changes or no differences between the two?—A. As I say, it is a copy but I thought there were some changes. I would have to go through, because we had attached on the original several attachments and I do not know whether they were all incorporated but from this we finally got a clean redraft.

Q. Is it not a fact that all of the penciled notations on that document which you hold in your hand now—Defendant exhibit 63—were made after this investigation had begun?—A. I think they were on this, yes.

This is for the purpose of explaining it.

Q. You are sure of that?—A. I am not sure but I know that I made notes to explain the loan agreement.

Q. On page three there is a notation in your handwriting, would you read that?

The COURT. Did you say 63?

Mr. MARION. Yes, of defendant exhibit 63. Would you read that penciled notation in your handwriting?

The WITNESS. "It must be clearly described, also plat."

By Mr. MARION:

Q. And that was put on there after the investigation had begun, was it not?—A. I think as far as I recall, they were put on.

Q. And the notation in your handwriting near one of the last paragraphs on the first page in the lefthand margin, would you read that penciled notation?—A. Yes, I see some of Mr. Robinson's writing on here, too.

[1148] Q. My question is, would you read the penciled notation which I referred to you just now?—A. Something as to resolution of Board, "Lefcourt. Would like to see Copy of note to be guaranteed."

Q. And on page two, the second notation from the bottom of the page, would you read that notation?—A. (Reading.)

> Spell out funds for promotional purposes. No funds disbursed where work is subject to approval by state or Federal agency. Comply with FHA requirements.

Q. Read the last notation at the bottom of that page.—A. (Reading.)

> Also require affidavit from Desser that work has been paid for.

* * * * *

Q. Congressman, I show you Defendant Johnson's exhibit 64 which purports to be a memorandum to Mr. Lykes Boykin, and ask you if you can identify the penciled notations which are on page 1 of that memorandum?—A. I can. Those were made for the purpose of explanation and this is a memorandum which I testified to, that Mr. Robinson was conferring with me, and wrote to Mr. Lykes Boykin regarding certain specific items dealing with proposed 2.3 million dollar loan.

Q. And when you say you placed the notations on there for purpose of explanation, you mean, that they were put there as an aid in your direct examination with reference to that document?—A. What few items are on the margin, there are only three or four on this page, to the best of my recollection, it was to clarify the explanation of the document which we prepared.

Q. And they were placed there, were they not, after the beginning of this investigation?—A. They could have been, because I say I made notations for the purpose of explaining these documents, but the document was prepared, together with Mr. Robinson, for Mr. Lykes Boykin.

[1149] The COURT. When you say "explained," do you mean in your testimony before the Grand Jury here?

The WITNESS. Yes.

By Mr. MARION:

Q. Now, second penciled notation in the margin on the left-hand side of the page, would you read that penciled notation, Congressman?—A. It says, "Check with something" but I cannot make out what the other is. I can't read it, to be honest with you.

Q. "Check with somebody," is that what it says?—A. It says "Check with" something.

Q. And the one below that, what does that say?—A. It is just a matter of approval.

Q. It says one word.—A. Yes, one word "Approval."

Q. The penciled notations on pages 2 and 3 are also in your handwriting, are they not?—A. Yes.

Q. Whose penned notation is that at the top of page 2, if you know?—A. I do not know.

Q. Whose penned notation is that which appears on page 1?—A. That is mine.

Q. Is it not a fact, Congressman, that you never gave a copy of this document to the FBI in January of 1962?—A. Mr. Marion, I would not know. I have many documents presumably which were not given to them, and letters too.

Q. Can you state where you got that document prior to the time you produced it here in Court?—A. No.

Q. Is it possible that is another one of the documents which you obtained from Mr. Robinson?—A. It could have been, but, as I say, I do not think so because Mr. Robinson's file was very depleted and I got no assistance from him.

Q. You are not prepared to state, as I understand it, [1150] that this did, in fact, come from your files?—A. As I say, I do not know, but I recall distinctly the preparation of the document.

Q. Now, I show you Defendant Johnson's exhibit 65 which purports to be a copy of a modification agreement, and I believe your testimony was, was it not, Congressman, that you contributed nothing to that particular document?—A. It could be. This is merely an extension to April 30 which is just for extending the Desser & Garfield mortgage for a short period, April 30, 1961.

Q. Congressman, did you, or did you not participate in the preparation of any of the language of that document?—A. I do not recall participating in this. It is a mere form.

Q. Did you not tell the jury on direct examination that you had contributed nothing to that document?—A. Show me that.

Q. That is defendant Johnson exhibit 65, is it not?—A. Yes.

Q. On page 3322 of the transcript, on direct examination, you were asked with respect to that document:

> Q. And who prepared that?—A. Mr. Robinson prepared a modification agreement which I approved where we extended, had an extension of the mortgage to April 10, 1961.

Q. And did you not contribute anything to the drafting of that?—A. I did not.

A. That is correct.

Q. But you did not recall today whether or not you had in fact?—A. I say, I did not recall making a contribution. To me it was a mere form. There were seven extensions of this mortgage, one followed more or less the other.

Q. And that document also has penciled notations on it, does it not, Congressman, in your handwriting?—A. That is true.

[1151] Q. Isn't it a fact that those notations have been placed there since the beginning of this investigation?—A. They could have because they are merely giving the date of the extension to March 1, 1961.

Q. Can you not state with certainty that they were in fact, placed there after the beginning of this investigation?—A. I can not but, as I say, I did make notations so that I could certainly simplify my testimony.

Q. This is a thermofax copy of a document which you delivered to the FBI, is it not?—A. Yes, it is.

Q. And does that thermofax not indicate that it is a thermofax copy of Defendant Johnson's exhibit 65 which you have in your lap?—A. That is true.

Q. And does that thermofax not indicate that at the time that thermofax was made by you and delivered to the FBI in January of 1962, that not a one of those penciled notations were on that document originally?—A. I see none and I told you twice that I had made, for the purpose of expedition to conserve time——

The COURT. You say that flatly now, you did make them for that purpose?

The WITNESS. Yes, sir.

The COURT. You have been saying "could be." As long as you do not say "Yes," or "No" and answer so many questions "could be," Mr. Marion is entitled to pursue it further until we get it clear.

The WITNESS. On this particular one, yes.

* * * * *

Mr. MARION. The Government will offer the thermofax copy of the agreement as government exhibit 176.

The CLERK. Government exhibit 176 marked in evidence.

[Government exhibit 176 marked in evidence.]

[1152] Mr. Marion. This is a copy of defendant Johnson exhibit 65.

By Mr. MARION:

Q. I show you defendant Johnson exhibit 66 which you stated, I believe, on direct examination was a copy of an agenda which you merely found in your file.—A. Yes.

Q. And the penciled notations on that document are in your handwriting, are they not?—A. They are.

Q. Were they not placed on that document after the beginning of this investigation?—A. They were, what few there are for the purpose of explanation.

Q. And I show you defendant Johnson Exhibit 67 which is the loan agreement. I believe you testified, did you not, that that is a copy of the final draft of the loan agreement of which Defendant's exhibit 62 and 63 were preliminary drafts?—A. That is correct.

Q. And you testified, did you not, that you had participated in the preparation of that loan agreement?—A. I did.

Q. And that there had been many meetings in connection with the preparing and reworking of the drafts into that final loan agreement?—A. With all of the proposed loan agreements.

Q. That document which you now hold in your hand, defendant's exhibit 67 contains many penciled notations, does it not?—A. There are some pencil and some pen notations.

Q. Are the penciled notations which you see in your handwriting?—A. Yes.

Q. And you are looking now at page 1, is that correct?—A. That is true.

Q. And there are some penned notations also on page 1, is that correct?—A. Yes.

Q. Are they also in your handwriting?—A. Yes.

[1153] Q. On page 9, near the lower part of the lefthand margin there is a penciled notation which is in your handwriting, is there not?—A. That is true, and the other is Mr. Robinson's handwriting.

Q. The notations which appear above that are in Mr. Robinson's handwriting?—A. That is true.

Q. And there are some penciled notations on page ten in the lefthand margin?—A. Yes.

Q. Are they in your handwriting?—A. That is true, yes.

Q. And, is it not a fact that all of those penciled notations which are placed on that document in your handwriting were

placed on that document after this investigation had begun?—A. Mr. Marion, I cannot say as to all. I certainly know that some, if not a majority, were put on for the purpose of explaining the loan agreement to the jury.

Q. Which notations were placed on there at the time of the writing?—A. I would not know.

Q. If any. And, do you know which ones, if any, were placed on after the investigation?—A. No.

Q. I show you a thermofax copy of a document, the first page appearing to be unrelated to exhibit 67 which you have just had in your hand, and I ask you whether the balance of that is not a thermofax copy of the defendant Johnson's exhibit 67?—A. It is.

Q. And does that not indicate, Congressman, that all of the penciled notations in your handwriting were placed on that document—defendant exhibit 67—after that thermofax was given to the FBI in January of 1962? I am referring to the penciled notations in your handwriting.—A. Yes, I do not see any in mine.

Q. As a matter of fact, the thermofax does contain the penciled notations which are on that document in Mr. Robinson's handwriting?—A. Yes.

[1154] Q. So they were on the document prior to the time the thermofax was made?—A. Yes, they were on there.

Mr. MARION. I offer this thermofax as Government exhibit No.—.

Mr. ROBINSON. May I see it, please, sir?

The COURT. Well, what is the next government number?

The CLERK. That will be government 177.

The COURT. Let that be reserved for it. If there is no objection, it may be so marked and if there is objection, I will hear your objections.

Go ahead.

[Government Exhibit No. 177 was marked for identification.]

* * * * *

Q. Congressman, I again refer you to the letter of February 6, 1961, from Mr. Robinson to you which contains the language, "I felt that very possibly you might have some suggestion or particular provisions that you might feel should be a part of the agreement when it is placed in final form and would appreciate your comments at your earliest convenience."

Near the bottom of the next to the last paragraph. Reading from Defendant exhibit 62.

Is it not a fact, Congressman, that you suggested no particular provision to be placed in that loan agreement?—A. I think I made several suggestions and I am looking through my file. I see that I have got some clear copies of different papers like the modification agreement and I would like to look through and see if I see clean copies of the others.

* * * * *

Q. My question related to the language near the end of the large paragraph in that letter in which Mr. [1155] Robinson suggested that you might wish to insert some particular provision in the attached loan agreement. And my question was, is it not a fact that you did not suggest any particular provision to be placed in the loan agreement?—A. Yes, I did suggest—and in the memorandum to Mr. Lykes Boykin, I know one or two of my suggestions were followed.

Q. Did you not tell the Federal Grand Jury, Congressman, that you could not recall placing any particular provisions in it because there had just been general discussion?—A. I could have.

* * * * *

By Mr. MARION:

Q. Did you not testify as follows, on page 44 of the transcript before the Federal Grand Jury:

> Q. Get back to this letter of February the 6th, Congressman. The letter you received from Mr. Robinson which enclosed a draft of a loan agreement with Desser & Garfield. Did you suggest any particular provision which should be placed in there?—A. I do not recall now because there was just general discussion on it.
>
> Q. Did you answer the letter?—A. No, I did not because——
>
> Q. Did you write any written memorandum about it?—A. No written memorandum.
>
> Q. Or any letter with any legal conclusion or legal memorandum in it?—A. No, it was all in general discussion.

Was that your testimony before the grand jury, the Federal Grand Jury?—A. It was and if I could explain that, since then

I did confer with Mr. Robinson and he called to my attention specifically certain provisions and also in my testimony before the grand jury, I spoke how these memorandums were prepared. How there [1156] would be general discussions. That is the agreements and one never knew what would be contributed to one or the other. It was a composite of several working together.

Q. Do I understand your answer to mean that your testimony as to these matters on direct examination was based on information which Mr. Robinson supplied to you prior to the trial?—A. Yes, and as I testified, I did not recall then. I do recall now specifically contributions made on certain provisions.

Q. Now, Congressman, you testified as I understand you here on the stand on direct examination that you actually participated in the negotiations which ultimately resulted in this proposed loan agreement, is that your testimony?—A. I participated, yes, there were general discussions.

Q. Is it not a fact that you did not participate in the negotiations but were merely advised of the result of the negotiations after the negotiations had been held?—A. No, that is not correct.

Q. Didn't you tell, or do you recall telling the Federal Grand Jury that you had been advised of the decision to make a loan and that that advice had been given to you by Mr. Lykes Boykin, Congressman Boykin and probably Edlin?—A. Yes. Now, what page are you referring to?

Q. I am referring to page 43 of the Federal Grand Jury. The question was:

> But then——
>
> A. Finally, after weeks of negotiation, it was agreed that First Continental Savings and Loan would advance to Desser and Garfield a development loan of $2,300,000 to be secured by First Mortgage on some one thousand acres, pledging the stock of Desser and Garfield, and having Lefcourt Realty Company, which was tied in with Desser and Garfield, sign as guarantor.
>
> Q. Was this decision made as a result of the ne-[1157] gotiations which you participated in in Mr. Lykes Boykin's office with Mr. Robinson and Mr. Edlin?—A. I don't know whether the decision was made but I was advised that First Continental would entertain the loan there of $2,300,000.

Q. Who advised you that?—A. Well, I think Mr. Lykes Boykin, Congressman Boykin—I think probably Edlin, himself, was there.

Was that your testimony before the Federal Grand Jury?

The COURT. Was there?

The WITNESS. Was there, yes. I do not see the question, though. There is no conflict.

* * * * *

By Mr. MARION:

Q. Congressman, you testified on direct examination as to work you say you did in connection with the preparing of the loan agreement regarding the Savarin Development Corporation, is that correct?—A. I told you that I had prepared a charter for the Savarin Corporation and minutes, by-laws and they were prepared by me.

Q. Did you not also testify that you participated in the preparation along with Mr. Robinson of the loan agreement and the other loan papers in connection with that loan?—A. I participated only to the degree that we ran into serious legal complications because the proposed loan dealt with two tracts and that the one tract could be completed or the lending institution could then decide not to go with the second, and then we had problems as to easements, as to the other rights of the usage of the property and it was really a very involved situation. The most complicated one I think I have ever worked on.

Q. Did you, Congressman, or did you not, prepare or participate with Mr. Robinson in the preparation of the [1158] loan papers which are contained in that defendant's 50-G which I showed you earlier this morning, that sheaf of papers regarding the Savarin Development Corporation?—A. Would you show it to me again? I do not recall.

Q. Defendant Johnson exhibit 50-G and it contains, does it not, copies of the various loan papers in connection with that loan?—A. Yes, I think that my testimony that Mr. Robinson prepared the loan agreement, he consulted with me, it was only on a consultation basis. There was a mortgage and other papers.

Q. All right, now, my question, Congressman is, did you or did you not assist Mr. Robinson in preparing those papers, those loan papers which comprise defendant's exhibit 50–G?—A. Well, I assisted from the standpoint of consultations, legal advice.

Q. Did you go over those papers before they were typed in final form?—A. Through discussion with Mr. Robinson.

Q. Did you ever look at them in December of 1960?—A. I don't know whether I noticed these or Mr. Robinson's rough draft. That I do not know.

Q. Are you testifying that you either saw these or you saw a rough draft of these?—A. I can say that Mr. Robinson consulted me time and again in respect to this very difficult proposed loan which we never made.

Q. Congressman, I am trying to find out whether you actually did any work on what turned out to be the paper, the loan papers, the loan agreement, and the other papers which are in that sheaf of papers?—A. I told you I did work in consultation with Mr. Robinson. He consulted me as to the provisions to be contained in the proposed loan agreements, the mortgage and other papers.

Q. Did Mr. Robinson ever show you the original or any draft of any loan agreement?—A. I do not recall his showing me the original but definitely we had many hours of discussion there on this particular project.

[1159] Q. Is it your testimony, then, Congressman, that you do not recall ever having seen any of those papers in December of 1960 which comprise defendant Johnson's exhibit 50–G?—A. Mr. Marion, I do not know what papers were shown me but Mr. Robinson spent considerable time with me discussing this particular proposed loan.

Q. Congressman Johnson, you testified on direct examination—and I am reading beginning with page 3225 of the transcript:

> Q. Now, Mr. Johnson, do you recall working with Mr. Robinson over a weekend dictating certain legal papers in connection with this transaction?—A. It was more than a weekend. We spent considerable time on this proposed loan. It involved very intricate legal problems. Mr. Robinson had his secretary from Florida to come to Washington and we worked in the preparation, dictating to the secretary that he brought to Washington. As I say, that involved over $2 million.

And then you go on to describe the loan, and on page 3226, you state in drawing the mortgages "We tried to take care of the situation but I was never satisfied legally that it was a

sound proposition."—A. Yes, that is a correct statement and I recall now, since you read it, that I did work with Mr. Robinson when he had his secretary to come from Florida.

Q. All right. Now, do you recall that you so testified on Monday, May 6 or do you recall what actually took place in December of 1960?—A. I recall both.

Q. Which is the correct version of whether or not you participated in the preparation of those papers?—A. That I participated, what I testified to.

Q. You did participate in the preparation of that loan agreement, is that your testimony?—A. Yes.

Q. And you also testified that you had participated [1160] with Mr. Robinson in reviewing the first draft of the Desser and Garfield loan agreement and that you had participated with him in the redraft of that loan agreement, and that you had worked with Mr. Robinson in the preparation of what turned out to be the final draft of the Desser & Garfield loan agreement, did you not?—A. That is true.

Q. And, it is not a fact, Congressman, that when you appeared before the Federal Grand Jury in September of 1962, you denied any preparation of any participation in the preparation of any loan agreement on the part of First Colony and First Continental?

Mr. DOUB. What page?

The COURT. What page, Mr. Marion?

Mr. MARION. Page 147, Your Honor.

By Mr. MARION:

Q. On page 147, "I did not prepare any loan agreement on the part of First Continental or First Colony for any loan."

And further on page 148:

> I worked in conjunction with the other attorneys but not in any loan agreements.

Was that your testimony before the Federal Grand Jury?—A. Yes, that was my testimony.

Q. Was it true at the time you said that before the Federal Grand Jury?—A. Well, it was true to this degree that my contribution was more of a legal aspect of it. There was a standard form on the loan agreement which Mr. Robinson prepared.

* * * * *

Q. Congressman, you testified on direct examination, if I am not mistaken, that you had discussed and agreed upon a fee arrangement with Mr. Robinson and Mr. Edlin at a meeting in your office in Washington on [1161] May 2, 1961, is that correct?—A. That is true and Congressman Boykin was also present.

Q. He was present along with you and Mr. Robinson and Mr. Edlin, is that right?—A. That is true after I returned from Southern Maryland.

Q. And at that time, as I recall, your testimony, you said that you agreed to a fee of $25,000 with $10,000 to be paid as a down payment immediately. And the balance would be paid shortly thereafter?—A. That was my understanding.

Q. And you indicated that this was a result of a discussion which had taken place at that time with respect to the Commission, provided in the purchase money mortgage, the Ernest purchase mortgage of January, 1958?—A. That is true.

Q. Congressman, is it not true that at that time you were not aware of the commission which was provided in the Ernest Purchase Money Mortgage?—A. I was aware. I have been an attorney foreclosing mortgages for many years and I was fully aware——

Q. And why, then, did you have to call Mr. Carrico as you also testified on direct examination, much later in order for him to confirm this commission?—A. I wanted to make sure that my understanding was correct as to the percentage and I wanted Mr. Carrico to remember it.

Q. Isn't it a fact, Congressman, that you never said anything in your FBI statement to the FBI which related any fee to a discussion based upon the Ernest purchase money mortgage?—A. I do not recall making any statement including it.

Q. And is it not a fact that you never mentioned this fact to the Montgomery County Grand Jury?—A. Nothing more than $25,000. I think I always mentioned the $25,000.

Q. As a matter of fact, did you not tell the Montgomery County Grand Jury that you were to get $50,000 under [1162] the terms of the Desser & Garfield agreement?—A. I so testified because they wanted to know about the draft of the agreement, the loan agreement, 2.3 million dollars between Desser & Garfield and the lending institutions. I told them that in that draft there had been provision made for a $50,000 legal fee, also $75,000 for engineering and other items, but I told them

that that was never received because that was never executed.

Q. Is it not a fact, Congressman, that the first time you ever mentioned a commission, a 6 per cent commission based upon the terms of the Ernest purchase money mortgage was in your letter of September 27, 1962, to Mr. Tydings, two days after you had appeared before the Federal Grand Jury?—A. I do not recall mentioning it before but I never considered it as a commission entirely because tied in with it was other work to be done for Charles County and Leisure City, so it was not exactly a commission fee.

Q. I show you what purports to be a letter signed by you, directed to Mr. Tydings, dated September 27?—A. Yes, sir.

Q. And direct your attention to the second paragraph of that letter and ask if that was not the first time that those facts in that paragraph were called to the attention of either the State or the Federal authorities?—A. The facts as to the mortgage?

Q. The facts as to the fees and commissions provided for in that mortgage?—A. I think it is the only time I mentioned about the $300,000 that would be a fee in the normal cases.

Q. I am referring to an exhibit which was previously marked "Hearing Exhibit No. 1."

* * * * *

Q. Congressman, you testified on direct examination, did you not, that this total proposed fee of $25,000 was to include the clearing-up of title, not only to Charles [1163] County, but to Leisure City, the tract in Virginia?—A. That is true.

Q. And, as I understand your testimony, that was a part of the discussion which you had with Mr. Edlin and Mr. Robinson at which Mr. Boykin was present on May 2, 1961?—A. That is true.

Q. Congressman, is it not a fact that you wrote Mr. Ashby in Virginia on June 1, 1961, and advised him that Hollis Rhinehart, another attorney, was authorized to direct the legal work in connection with the clearing of title to the Leisure City tract?—A. [Pause.]

Q. I show you government exhibit 156 and ask you if you did not so advise Mr. Ashby on June 1, 1961?—A. I did, and as the evidence has shown, Mr. Rhinehart did not pursue the work. I did all the supervision of the title. But Mr. Rhinehart was to assist in the legal work.

Q. Would you read the jury what your letter says about Mr. Rinehart's position.—A. It says:

> My apologies for the delay in answering your letter of May 18, 1961. Yesterday, I talked with Mr. Hollis Rinehart who is to be in touch with you within the next few days. Mr. Rinehart is authorized to direct the legal work to be done in this matter.
>
> I may add that the composite plat embodying all of the land in question is most urgent and I do hope that same may be made available at the earliest possible date.
>
> With kind personal regards, I am,
>
> Sincerely yours,
>
> THOMAS F. JOHNSON.

By Mr. MARION:

Q. Congressman, were you not further questioned before the Federal Grand Jury about each of the checks beginning with the check on May 2, 1961 through the check [1164] on September 12, 1961, before the Federal Grand Jury?—A. I was.

Q. And your testimony on direct examination in this case, as I understood, was that each of those checks was in part payment of this total agreed fee of $25,000.—A. Would you show me what page you refer to?

Q. That was your testimony, was it not?—A. I say, I would like to see what you refer to.

Q. I am referring now to what you——

* * * * *

By Mr. MARION:

Q. Is that your testimony now, Congressman?—A. As I said, as far as I could recall, but I do not know—I do not recall the testimony you refer to.

Q. Let me ask you then, was each one of those checks delivered to you as part payment on the total agreed fee of $25,000?—A. Now, which checks do you speak of?

Q. The check of May 2, 1961 in the amount of $3,500, a check dated May 25, 1961 in the amount of $2,500?—A. They are all separate checks.

Q. And all subsequent checks to and including a check for $1,500 dated September 12, 1961?—A. And including the $3,000 in Travelers checks.

Q. Is it your testimony now then that each of those was given to you as a part payment on the total agreed fee of $25,000?—A. It is.

Q. And when you were asked about each of those checks when you testified before the Federal Grand Jury, is it not a fact that you never mentioned once that any of those checks was in part payment of any agreed fee between you and Mr. Edlin and Mr. Robinson?—A. I do not recall. I said they were in reference to Charles County and Leisure City if my recollection is correct.

[1165] Q. And, is it not a fact that you never mentioned that they were part payment of an agreed total fee?—A. I cannot say because I mentioned the $25,000. I mentioned the checks in respect to Leisure City and Charles County.

* * * * *

By Mr. MARION:

Q. I show you government exhibit 12 which is a check from the First Continental Savings and Loan Association payable to the order of Johnson & Johnson, dated May 2, 1961. I ask you where you received that check?—A. I received that in Washington and that was the payment on the fee that you speak of, the $25,000.

Q. From whom did you receive that check?—A. Either Mr. Robinson or Mr. Edlin, I do not recall which one.

Q. And do you know whether you received it on that date or at some subsequent date?—A. No, but it is May 2, 1961.

Q. And did you send any letter or bill before you received that check?—A. No, this was the date on which they had agreed as to the fee. There was no occasion to send any bill.

Q. Do you recall whether or not that check came enclosed to you in any letter, or whether it was delivered to you, personally?—A. I do not recall.

Q. I show you government exhibit 13 which is a check of the First Continental Savings and Loan Association bearing date of May 25, 1961, payable to the order of Johnson & Johnson, and ask you where you were when you received that check?—A. To the best of my recollection that was delivered to me in Washington at my office.

Q. And by whom was it delivered to you?—A. I do not know that.

Q. And did you send any letter or bill requesting that payment?—A. No, because this is part of the fee that was agreed upon.

[1166] Q. How would it be determined just when you would receive the subsequent checks after that meeting?—A. It could not be determined.

I had to request, or make known that it was due.

Q. How did you make known that you wished to receive the check dated May 25, 1962, and to whom did you speak if you spoke to anyone?—A. Well, during the time certainly I was in touch with Mr. Robinson and no doubt I mentioned it to him.

Q. Would this be just a conversation between the two of you?—A. Well, it would be a conversation, yes.

Q. Let me show you government exhibit 14 which is a check of First Continental Savings and Loan Association in the amount of $4,000 payable to the Order of Johnson & Johnson, and I ask you where you received that check?—A. In Washington and that was in payment of the two previous checks of the dates you referred to from First Colony which aggregated $4,000.

Q. When had you returned to First Colony the two checks prior to that date aggregating $4,000?—A. I would not know when I returned those.

Q. To whom did you return them?—A. I think I returned them to Mr. Edlin. I am not sure.

Q. And to whom did you make a request that a First Continental Check in the sum of $4,000 be issued to you in substitution for the two earlier First Colony checks?—A. To both Mr. Robinson and Mr. Edlin.

Q. Do you recall where that conversation took place?—A. In my office.

Q. In Washington?—A. Yes.

Q. Do you recall who it was actually delivered that check to you?—A. No, I would not know.

Q. You do not know whether it came by mail or by some individual?—A. No.

[1167] Q. I show you government Exhibit 15 which is a check of First Continental Savings and Loan Association dated June 28, 1961, in the sum of $3,250 payable to Order of Johnson & Johnson.—A. Yes.

Q. I ask you where you were when you received that check?—A. That was likewise received in Washington and a payment on the agreed fee.

Q. From whom did you receive it?—A. I could not state on that.

Q. Who had you spoken to about it prior to the receipt of that check?—A. It could have been Mr. Robinson or Mr. Edlin. I do not know.

Q. Do you know why that check is in the sum of $3,250, rather than a rounder figure?—A. I do not.

Q. Did you request that specific sum at that time?—A. Not to my knowledge.

Q. Do you recall with whom you spoke about that?—A. No, as I say, I do not remember because it was so unimportant at the time and I did not realize it would become important.

Q. I show you government exhibit 67 which is a check drawn on the account of W. L. Robinson, dated August 4, 1961, payable to Johnson & Johnson in the sum of $2,000, and ask you if you can state where you were when you received that check?—A. Yes, in Washington and this was a payment on account which I remember Mr. Robinson told me would be charged against the land companies.

Q. You received that directly from Mr. Robinson?—A. Mr. Robinson.

Q. Had you communicated with him prior to that time about the receipt of that check?—A. Oh, I am sure I had.

Q. Do you recall what type of communication that was?—A. No, because Mr. Robinson was also working on the [1168] land-company matters and I did have occasion to see him from time to time.

Q. And is it your recollection that he actually delivered that check to you in your office?—A. To the best of my recollection.

Q. I show you government exhibit No. 83, a check on the account of W. L. Robinson dated September 12, 1961, payable to Johnson & Johnson, attorneys, in the sum of $1,500. I ask you from whom you received that check?—A. Yes, that was from Mr. Robinson who delivered that to me.

Q. Personally?—A. As far as I recall. Advising me that it was from the escrow account of one of the land companies.

Q. And he delivered that to you, personally in your office in Washington, did he?—A. As best as I recall.

Q. And had you had a conversation with him prior to that time about the receipt of that check?—A. I possibly had.

Q. You do not recall?—A. No.

• • • • •

Q. Congressman, you introduced into evidence a check which you issued in the amount of $4,400 payable to the firm of Goolrick, Ashby and Whittaker, in Fredericksburg.—A. I did.

Q. You recall that check, and that check was dated December 28, 1961, was it not?—A. That is correct.

Q. And that was sent with a letter which was dated December 28, 1961?—A. That is correct.

Q. But that letter with which that check was enclosed was not mailed until being mailed from Baltimore on January 8, 1962, is that not also correct?—A. That is, and I think that I should explain that to the best of my recollection I returned from some two months' abroad about the 22nd, maybe the 23rd. I was in my Washington [1169] office. I had an accumulation of bills. If I recall correctly, I dictated the letter prior to the 28th and held it to make sure that my bank account was sufficient to take care of these accounts, and I verified that later by talking to the secretary. She seems to recall that took place.

Q. Who was the secretary?—A. Miss Fermoyle.

Q. And when did you dictate that letter to her?—A. I am inclined to think it was the 23rd or 24th of December 1961.

Q. When did she type that letter?—A. I presume on the 23rd or 24th. I do not know.

Q. Would you say that the letter was dictated and typed prior to the 28th?—A. That is my recollection.

Q. It was dated the 28th.—A. Yes, I had hoped to mail it on the 28th. I did not make any arrangements to cover the account because there were several other bills that had accumulated and I was late in mailing the letter.

Q. And for what purpose did you dictate a letter and have your secretary type it on the 23rd of December, but dated it the 28th of December?—A. Because I expected that I could mail the letter on the 28th, but I was not able to do so, but later I did mail and they received their money, the $4,400.

Q. Now, isn't it a fact, Congressman, that you did in fact mail that letter on the 8th of January before you had arranged a sufficient transfer of funds to cover that check on your Berlin account?—A. I can't say. I was under the impression I had sufficient funds.

Q. Didn't you transfer $3,500, which would make enough in your Berlin account to cover that check by a check drawn on the Sargent-at-Arms dated January 11th and deposited to your Berlin account on January 12th?—A. I did borrow money from the Sergeant-at-Arms, but I had an accumulation of checks, not only the check you speak of, but others. That is the reason that check was delayed. I did not want to mail it until there were sufficient funds. [1170] I thought I had more funds on hand at the time than actually my account showed.

Q. You say you talked to Miss Fermoyle about this letter?—A. Yes.

Q. She advised you, did she not, that she was not in your office in Washington on the 28th of December?—A. She told me that she was away. I think home, which I knew about. No one was in the office, I don't think, except Mr. Buarque during that time.

Q. She was in Connecticut, was she not?—A. She went home for the Christmas holidays.

Q. From Christmas until after the first of the year?—A. I think all did except Mr. Buarque. I think he was the only one who remained there.

Q. Now, was that letter of December 28th typed in your Washington office?—A. To the best of my recollection I had no knowledge of it until I saw it in my file.

Q. Why was it, Congressman, that you drew a check and sent it to Mr. Ashby in late December or early January?—A. I just finished telling you that I thought I would have funds by the 28th.

Q. I am sorry.—A. But I did not.

Q. I am sorry. Perhaps my question is unclear. Why did you take it upon yourself to issue that check to Mr. Ashby at that time?—A. Because I had felt personally responsible for the check.

Q. Did you not testify on direct examination that when you arranged the final settlement of your account with Mr. Edlin some time shortly prior to October 23, 1961, that it was agreed that you would receive $3,000 net to you, and that they would take care of paying other attorneys as well as certain other bills?—A. That is correct, and I thought that was the case, but I found out that it was not true, and the account was still open.

I had given my word to [1171] pay the account, I was obligated for it, and I felt an obligation to do so.

Q. Now, is it my understanding of your testimony that as of October 23, 1961, you felt you had no obligation on that bill?—A. No, I didn't say that at all. I always had an obligation, but I thought the account was to be paid.

Q. By whom?—A. By Charles County or Leisure City.

Q. And had you not sent prior bills which had been addressed to you to Mr. Robinson or to Mr. Edlin so that they could be paid from that account?—A. I could. I don't recall.

* * * * *

Q. I show you Government's Exhibit 157 and ask you if the original of that letter addressed to you by Mr. Ashby on July 5, 1961, was sent to you?—A. Yes, I received the original.

Q. And that letter had a bill attached, did it not or enclosed?—A. Yes, it did.

Q. And is it not a fact that you turned that letter and that bill over to Mr. Edlin or to Mr. Robinson?—A. As I say, I do not know, but I certainly was in hopes that they would pay, the land company would pay the bill.

Q. I show you Government's Exhibit 160, and direct your attention to the second paragraph. Doesn't that letter indicate that you were intending for the bill to be paid by the clients, not by yourself?—A. Yes, this confirms what I just told you, that I wanted to know whether the fee or the obligation to the attorneys in Virginia remained unpaid or not.

Q. I show you government exhibit 163 which is a carbon copy of Mr. Ingram's letter to you of October 12. And that is a copy of his answer to your letter of October 10, 1961, is it not?—A. In which he states that the fee had not been paid.

[1172] Q. And did you not turn the original letter which you received, over to Mr. Edlin or to Mr. Robinson for payment?—A. I could. I do not know on that.

Q. You would not deny that you did?—A. No, I would not deny because I have no recollection.

Q. You would not deny that you turned the original letter of July 5 and the bill over?—A. No.

Q. And did you receive a carbon copy of Mr. Ashby's letter to First Continental of December 27, 1961 which is government exhibit 164?—A. Yes, I did receive that and also confirmed that they had not been paid.

The COURT. I do not understand that. Was Ashby's letter of the 27th of December, 1961, asking First Continental for the money, is that correct?

Mr. MARION. Yes.

* * * * *

Q. Now, Congressman, you have testified both on direct and on cross examination that the $4,000 check from First Continental which I showed you this morning, the $4,000 check dated June 7, 1961 was a substitution for two First Colony checks?—A. That is true, one on May 2, 1961 and one on May 22, 1961.

Q. And you testified, did you not, that this was a part of the initial down payment of $10,000 on the total fee of $25,000?—A. That is correct.

Q. Did you testify as follows before the Montgomery County Grand Jury, referring to page 38 of the transcript?—A. Just a minute. Let me get mine. What page is that?

Q. Page 38.—A. Yes.

Q. "The First Continental on June 7, 1961—Johnson & Johnson, $4,000. I would like to state there that that was to take care of Goolrick, Ashby and Whitaker. Instead of $4,000 it was $4,400 that I paid from the account on that check."

[1173] Is that correct? Did you so testify?—A. That is correct.

Q. Was that correct?—A. Yes, that is correct. If I may explain.

Q. All right.—A. May 18, I had received a very long communication from Mr. Ashby in which he stated that the minimum schedule of fees would be $4,400 for the work done in Virginia. He was anxious to go forward and wanted me to confirm fees which meant that I would be responsible for the fee. I did not feel disposed to do so until I had received what was agreed, the $10,000 coming to me.

I felt that I would not run a risk of having to pay out this sum of money. When I was paid the money on June 7, I then arranged a meeting on June 9 with Mr. Ashby, and he confirmed the arrangements; he stated that—in a letter on June 10 to Mr. Ingram, Congressman Johnson confirmed the arrangements for us to proceed with the abstract of title.

Q. And you say you arranged that meeting with Mr. Ashby after you received——.—A. The $4,000.

Q. And, as a matter of fact, Congressman, did you not telephone Mr. Ashby one time in the month of June and that was June 2, 1961?—A. I may have telephoned but I was with Mr. Ashby in Fredericksburg on June 9, 1961, at which time I then confirmed verbally the work to be done outlining what was required. I went into quite detail because we were together several hours.

Q. You said, as I understand it, you set that June 9th meeting up with Mr. Ashby after June 7, 1961?—A. That is right.

Q. My question to you was, was not the only time you telephoned Mr. Ashby from Washington to Fredericksburg in the entire month of June, on June 2, 1961?—A. I cannot say it was not true. It may be, yes.

Q. I show you Johnson's Exhibit 85 which is the telephone bills of your office for the month of June, and I notice [1174] that you had placed a check mark beside Mr. Ashby's name on the first page. Does that refresh your recollection that the call was made on June 2, 1961?—A. It reflects it but it does not reflect as to the only time that I had been in touch with Mr. Ashby. Congressman Boykin was in touch with him frequently. In fact, he was the one that made the arrangements for the meeting on the 9th, so other telephone calls were made.

Q. This was the only telephone call?—A. The only one I have, yes.

Q. As I understand your testimony, then, Congressman, the $4,000 check which you received was in fact for you to take care of Mr. Ashby and his company attorneys in Virginia?—A. No, I do not think that is correct. It was only to protect me and I was in hopes that the land companies would take care of it. They did not. But I felt personally responsible for the obligation.

The COURT. Well, now, I just do not understand this. I should like to get it clear. At the time you agreed with Mr. Ashby and his partners to undertake this work for $4,400, was it your understanding with Mr. Edlin and Mr. Robinson that one or more of those corporations was going to pay the bill for $4,400 or was it your understanding with Mr. Edlin and Mr. Robinson or the corporation that you were going to pay the $4,400 out of whatever fees you got?

The WITNESS. Your Honor, at the time of the agreement, this particular bill was not discussed. They stated it would be a

net amount to me of $25,000 which I never received but they were to pay all obligations.

The COURT. Then whatever—if the amount was not discussed, it was the understanding that they were to pay the bill of $4,400 or whatever the amount might be?

The WITNESS. Yes.

The COURT. That the fee to you was to be net?

[1175] The WITNESS. But when I obligated myself, I felt personally responsible to the attorneys in Virginia.

The COURT. Now, was the $4,000 paid to you—the question I want to ask, and I want this—was the $4,000 which you received on June 7, 1961, received by you as part of your fee or whether it was paid to you to take care of Mr. Ashby when the payment was made in June—whatever may have happened afterwards, when the payment was made in June, was it made to you to take care of Ashby, or was it made to you on account of your fee?

The WITNESS. It was paid as a part of the fee, but I did want protection since I was to see Mr. Ashby—that I would not find myself obligating $4,400 and not having the funds in hand.

The COURT. I understand that, but we have before the Grand Jury testimony, and here. That is, Montgomery County Grand Jury and I wanted to know which is correct.

You say it was paid to you as a fee, and not paid to you to take care of Ashby.

The WITNESS. No, not to take care of—Ashby.

By Mr. MARION:

Q. Did you testify as follows before the Federal Grand Jury:

> Question: Let me ask you this. On June 7, two weeks later you got a check for $4,000 from First Continental. What was that for, Congressman?—A. That was actually to take care of the attorneys down in Virginia.

Was that your testimony before the Federal Grand Jury?—A. It was and it was to protect me on my commitment is what I felt.

The COURT. You say to protect you, Congressman. You [1176] see no distinction between a payment to you on your fee and a payment to take care of them?

The WITNESS. Judge, I felt it was the obligation of the land companies but I did not want, when I was with Mr. Ashby on June 9, when I gave him my word to go forward and being responsible as I thought for the fee, I did want the protection.

* * * * *

Q. Congressman, in your prepared statement of January 23, 1962, did you state the following:

> The firm of Goolrick, Ashby and Whitaker, Attorneys, Fredericksburg, Virginia, were selected to do the necessary legal work. Many telephone calls and considerable conversation ensued with the Virginia law firm. Their bill for services amounted to $4,400. So, Mr. Robinson, during June forwarded to me two checks from an escrow account of First Continental Savings, one for $2,500 payable to Johnson and Johnson, Attorneys, and deposited to the Special Account on June 5, 1961, and the other for $4,000 payable to Johnson & Johnson and deposited to the special account on June 9, 1961. I later mailed to Goolrick, Ashby and Whitaker, Attorneys, check on the Special Account in the amount of $4,400.

A. Yes, I made that.

Q. Congressman, as a matter of fact, it was not you who retained Mr. Ashby or Mr. Willis or Mr. Ingram in Virginia, was it?—A. Not originally; Mr. Hollis Rinehart originally had contacted him. But Mr. Rinehart left and went to Florida and under date of June 10, 1961 Mr. Ashby confirmed to Mr. Ingram the following:

> Congressman Johnson confirmed the arrangements for us to proceed with the abstract of title to the properties

and went on to enumerate.

Q. But they were originally retained by Mr. Rinehart, were they not?—A. They were not, I would say re-[1177]tained but Mr. Rinehart had contacted them and then on May 18, 1961 Mr. Ashby in a letter to me asked me, he said, "It is my understanding that you will consider the foregoing, that is the $4,400, and confirm the fee arrangement and authorize me to have each interested attorney proceed."

So, Mr. Rinehart had but ultimately I was the one to confirm.

Q. But you, yourself, had retained Mr. Carrico in Charles

County, is that correct?—A. Yes, that is the Charles County, this is Leisure City we are talking about.

Q. I understand that.

When Mr. Carrico's bill came to you, you forwarded that to Mr. Robinson and it was paid by Charles County Land Company, was it not?—A. Yes.

Q. When Mr. Mudd's bill came to you, you forwarded that to Mr. Robinson and it was paid by Charles County Land Company, is that not correct?—A. Yes.

Q. Did you not also retain Mr. Andrews in Virginia?—A. I did but I do not think I have ever gotten a bill or he has sent a bill for his services.

Q. As a matter of fact, he has never been paid, has he, Congressman?—A. I have tried to find out but I am told he has not, and I requested and I wanted to get a bill.

Q. When did you last request or seek to find out from Mr. Andrews whether or not he had been paid?—A. It was sometime last year. I think with Congressman Downing, I had mentioned about it.

Q. Did you speak to Mr. Andrews about it?—A. No, I spoke to his associate, his partner.

Q. You never wrote Mr. Andrews?—A. No, I did not. I think Congressman Downing was a very small amount, and I never got the amount from him.

[1178] Q. Is it not a fact that Mr. Andrews sent you two bills and was never paid?—A. To my recollection I never received any bill from Mr. Andrews.

Q. If you had, you would have turned it over to Mr. Robinson?—A. I might have.

Q. You have two bills in your files?—A. No, I have none from Mr. Andrews.

Q. Now, you testified, I believe, Congressman, that in late October of 1961, you had a discussion as to a final settlement of your fee account with Mr. Robinson and Mr. Edlin in Washington?—A. Yes.

Q. That at this time you agreed to accept $3,000 in full payment of the balance of what you felt was due to you?—A. That is correct.

Q. Is that correct?—A. Yes.

Q. And is it not a fact that you actually at that time asked Mr. Robinson and Mr. Edlin for $5,000 but that after some

bartering or negotiating it was agreed that you would get $3,000?—A. I think maybe you are correct on that.

Q. You recall that, do you?—A. I recall something about a $5,000 settlement, but it was agreed on three..

Q. But you had asked for $5,000—do you recall that?—A. I might have.

Q. And you also testified, did you not, that you actually received these traveler's checks from Mr. Edlin at a table some several tables away from the table where the group who were there in the lounge of The Woodner Hotel had congregated?—A. I would not say physically from Mr. Edlin. I think Mr. Rains brought them over. He may have given them to Mr. Edlin, but they were from the First Continental Savings and Loan which at the time was under state supervision, audited by state auditors.

Q. Didn't you tell the agents of the Federal Bureau of Investigation on January 10, 1962, that you had negotiated [1179] the settlement of your account with Mr. Robinson, and that you went to The Woodner Hotel to meet Mr. Robinson, and that it was Mr. Robinson who actually gave you those traveler's checks?—A. Well, if I did, Mr. Edlin was certainly present but Mr. Robinson was there, too.

Q. Would you deny that that is what you told the agents on January 10?—A. No, maybe the agents asked me if Mr. Robinson was there. Mr. Robinson was there.

Q. And you also testified, did you not, that Mr. Edlin and Mr. Robinson came to your office during the late afternoon of—excuse me, October 23, 1961?—A. That is true because it was agreed they would send a check, and came in person late in the afternoon. I was greatly disturbed because I was leaving at 8 o'clock the next morning and I told them that I did not like their not being there earlier with the check so I could get traveler's checks. They assured me that First Continental Savings and Loan had that service.

Q. And is it not a fact that while they were in your office in the late afternoon of October 23, it was at that time you called Mr. Miller in the Department of Justice to tell him "Good-bye."—A. I do not recall. I think that I called Mr. Miller later but it could have been. I do not remember but I did talk to Mr. Miller to say "Good-bye."

Q. You did leave your office with Mr. Edlin and Mr. Robinson, did you not, to go to the Woodner?—A. I did.

Q. You called Mr. Miller—did you not, originally at 4:37 in the afternoon and again at 5:03 and talked with him at 5:07 on the afternoon of October 23?—A. I think the record shows that but I do not believe that Mr. Robinson and Mr. Edlin got to my office until after five o'clock.

Q. Is it your testimony that they were or were not in your office when——.—A. I would not know.

Q. You would not deny they were there?—A. No. Because I made a series of telephone calls to say "Good-bye" to many friends.

[1180] Q. Did you make all of those telephone calls while Mr. Edlin and Mr. Robinson were in your office?—A. I would say not.

Q. Now, you testified that at some time prior to October 23 you recall talking to Mr. Robinson on the telephone about settling the fee account. Was that not your testimony?—A. I think that is true, yes.

Q. Was there not a letter which was purportedly written on October 16 from you to Mr. Robinson in which you said something about traveler's checks?—A. There was. I found such a letter in my file.

Q. Do you have a copy of that letter with you?—A. I do not.

Q. Do you know where your copy of that letter is?—A. I think you have it.

Q. We have a thermofax. Do you have your office copy?—A. Maybe Mr. Doub has it. I do not know.

Q. Do you not know whether you have it or not?—A. No, I could go through but I do not know whether I have it.

Q. Did you not look for that particular letter when you were preparing for your testimony in this case?—A. I imagine I did.

Q. You referred to that letter, did you not, when you testified before the Federal Grand Jury?—A. I did.

Q. And you referred to it when you testified before the Montgomery County Grand Jury?—A. I did.

Q. And you gave a thermofax copy of that to the FBI, did you not, on January 19, 1962?—A. I did.

Q. Is it not a fact, Congressman, that that letter was written substantially after October 16, 1961?—A. Not to my knowledge, no.

Q. I show you a thermofax copy of a letter which purports to be a letter of October 16, 1961 from you to Mr. [1181] Rob-

inson given to the FBI and ask you if you can identify that as the thermofax which you gave to the FBI of your office copy of that letter?—A. Yes, this is the copy.

Q. Now, where was that letter dictated?—A. I presume in Washington. I do not——

Q. When was it dictated?—A. Well, according to the date it is October 16, 1961.

Q. Do you have any independent recollection of when that letter was dictated?—A. I have not, none whatever.

Q. Is it possible that letter was dictated after October 16, 1961?—A. I do not think so because I left on October 24.

Q. Is it possible it was dictated by you some time after you returned on December 23, 1961?—A. Not to my knowledge. I say, I do not know. I presume it was October 16.

Q. Are you saying that it is possible or not possible that it was dictated after December 23, 1961?—A. To me it seems to me it would be impossible afterwards. I would think on October 16.

Q. You dictated the letter, did you not, Congressman?—A. Yes, I dictated the letter.

Q. And it was to Mr. Robinson, is that correct?—A. That is correct.

Q. And you cannot state when that letter was actually dictated?—A. No more than what is on the date.

Q. Do you know where the letter was typed?—A. That was, I presume in Washington but I do not know.

Q. Do you know when it was typed?—A. As I say, the date is October 16. I presume it was on that date.

Q. Now, do you know by whom it was typed?—A. No, it is "D.D." or "BF" are the initials.

Q. Are they the same initials which are on your [1182] letter of December 28, to Mr. Ashby?—A. I would have to see it there. I do not know. Yes, the same ones.

Q. That was Miss Fermoyle, was it?—A. Yes, Brenda Fermoyle.

Q. Congressman, why was it necessary for you to write that letter of October 16 to Mr. Robinson in Washington, D.C., on October 16?—A. Well, this merely brings attention to my desire to close out my representation and to press upon him that

I was leaving on the 24th and some other matters that are in there.

* * * * *

Q. Now, Congressman, did not Mr. Robinson know prior to October 16, 1961, that you were leaving with the Foreign Affairs Committee and would be away for two months?—A. I can't say whether he was advised, but I had talked with him on the telephone some time before this.

Q. Hadn't you advised him of that fact when you discussed with him the final settlement of your fee account?—A. I don't think so, no.

Q. And didn't Mr. Robinson know at this time that Harry Adelberg had taken over the legal work covering Leisure City and Charles County Land Company?—A. He knew that Mr. Adelberg had done work on both, but not that he had taken over.

Q. Isn't it a fact that Mr. Adelberg never did any work for Leisure City Land Company?—A. I can't answer that. I am under the impression he had.

Q. And isn't it a fact that he had been handling Charles County Land Company's work since July or August of 1961?—A. Well, certainly since the last of August, because from that time on I became out of the picture.

Q. Now, you had testified, had you not, that you stopped working for all practical purposes in late August, because of certain undisclosed principals whose identity you could [1183] not learn?—A. I think I stated August or September. I think I also mentioned September.

Q. But that was the reason that you stopped for all practical purposes at that time?—A. One of the reasons.

Q. And did you testify as follows before the Montgomery County Grand Jury:

Mr. Johnson——

A. What page is that?

Q. Page 59. The question was from a Juror:

> Mr. Johnson, you have said that you thought a great deal of Mr. Edlin in the beginning. When this F.H.A. loan was turned down, weren't you more wary?
>
> The WITNESS. Well, I was more wary; but I did not get wary until possibly July or August.

Were you asked that question and did you give that answer before the Montgomery County Grand Jury?—A. Yes.

* * * * *

By Mr. MARION:

Q. Congressman, did you testify as follows on page 62 of the Montgomery County Grand Jury transcript:

> Well, the only thing that disturbed me, I could not get who was back of Charles County. I became disturbed that I could not find out who actually had stock interests, who were the officers of Charles County and Leisure City.
>
> And I got in touch with Mr. Adelberg and I told Mr. Adelberg that I felt that our firm should cease representing him.

Did you so testify?—A. I did. I claim there were undisclosed principals and I was anxious to know who were the principals in the two land companies.

[1184] Q. Now, this letter, bearing date of October 16, 1961, refers to—"I have given Mr. Adelberg two checks." Was this the first time you had ever advised Mr. Robinson that you had paid Mr. Adelberg by two checks dated July 5 and August 7?—A. To the best of my knowledge, it was. I could have, but I do not recall of any other information.

Q. You do not recall whether this letter was the vehicle by which you advised him of that fact?—A. I had advised him in the letter but whether I had told Mr. Robinson what one or more of the checks were for, I would not recall.

Q. Congressman, I show you another thermofax copy of what purports to be a letter from you to Mr. Robinson which bears date of May 22, 1961 and ask you if that is a thermofax copy of an office copy of a letter which was delivered by you to the FBI in January of 1962?—A. It is.

Q. And your office copy of that letter was not offered in evidence, was it?—A. No, because Mr. Doub did not feel that it was of sufficient importance, sir.

Q. Do you have your copy of that letter?—A. I do not know. I can look. I do not know.

Q. Have you seen it since you began your preparation for trial?—A. I do not recall but I knew of the letter and I think I have got a copy, thermo-fax copy of the same letter.

Q. Do you have your original office copy?—A. I say, I may have in my files.

Q. When was that letter dictated?—A. On May 22, 1961.

Q. Do you have any independent recollection of having dictated that letter on May 22, 1961?—A. No, but with that date, why, that was the date of that letter.

Q. Is it not a fact that that letter was dictated at the same time, the October 16th letter was dictated?—A. No, this was May 22, 1961.

[1185] Q. Do you deny they were typed at the same time?—A. I deny that. To the best of my recollection that is May 22, 1961.

* * * * *

The COURT. Is there any objection to this letter? Then let it be marked in evidence.

The CLERK. Government exhibit 180 marked in evidence.

[Government exhibit 180 marked in evidence.]

Mr. MARION. Members of the Jury, this is a thermofax copy of an unsigned letter bearing date of May 22, 1961, addressed to Mr. W. L. Robinson, Attorney at Law, Woodner Hotel, Washington, D.C.

DEAR BILL:

You asked that I advise the exact date that the certificate of incorporation of Leisure City was placed of record. I have in my files the certificate issued by the Clerk to the State Corporation Commission, Richmond, Virginia, showing that the recording was May 2, 1961.

If there is any further information desired, please advise. In view of the tremendous work done by our firm in respect to both Leisure City and Charles County Land Corporation, I hope a check can be mailed at an early date. These legal fees, I understand from you, will be paid from the escrow account and charged to the two land companies. If you prefer a written statement, the firm will send such to you or the bank. I think there should be an early meeting with Frank Boykin to secure the required information on the Brown tract.

Sincerely,

[S] Thomas F. Johnson.

[1186] By Mr. MARION:

Q. Congressman, did Mr. Robinson not know prior to May 22 that the Leisure City had been incorporated on May 2, 1961?—A. I do not think so. We had some complication be-

cause a charter was signed the 29th of April and it was not sent over to the tax authorities in Richmond until the second. We had quite a complication. He wanted a copy to know the date that it was finally chartered.

Q. Between May 2 and May 22 had you not been in touch with him about the matter?—A. Oh, I had been in touch. But I wanted to get officially the date of the charter.

Q. And when did you receive the certificate issued by the clerk to which you refer in this letter?—A. I did not receive it from the clerk. I think I got it from Mr. Andrews, if I am not mistaken.

Q. And when did you get it from Mr. Andrews?—A. I do not recall.

Q. The letter speaks of tremendous work done in respect to both Leisure City and Charles County Land Corporation and is it not a fact that as of the date on that letter, that Mr. Ashby had not even been authorized to proceed with his work in Virginia?—A. We had done work on that, trying to compile our own composite map. In fact, Mr. Robinson had a room filled with plats that he had gotten from some source, whether Congressman Boykin or who, but we had been working on that for some while.

Q. And where was that room?—A. At The Woodner Hotel.

Q. You had been working at The Woodner Hotel?—A. I had with him, yes.

Q. That dealt with Leisure City, did it?—A. It dealt with Leisure City.

Q. Is it not a fact, Congressman, that that letter bearing date of May 22, 1961 and the prior letter bearing date of October 16, 1961, are the only two letters which you [1187] ever turned over or have as yet produced which indicate that you wrote to Mr. Robinson at all in the year 1961?—A. I would have to review my files. I do not know of other letters. I do not know.

Q. And is it not also a fact that the date of both of those letters is a date on which you visited Mr. Miller in the Department of Justice?—A. Again I would have to check the visit list.

Q. Do you have the exhibit which you were referring to when you testified about the visits on direct examination?—A. Yes, if you will give me the exhibit, I will check.

Q. Did you not have a yellow pad which was marked for identification?—A. These do not give me the dates on the visit.

Q. That does not show that you visited Mr. Miller on May 22?—A. In my notes there is a May 22nd, yes.

Q. And there is an October 16, is there not?—A. Yes, on October 16.

* * * * *

The CLERK. Resume the stand please, Mr. Johnson.

Thereupon THOMAS JOHNSON, a witness, having been previously sworn, resumed his testimony further as follows:

CROSS EXAMINATION (resumed)

By Mr. MARION:

Q. Congressman, at the close of the day yesterday, I had asked you about this thermofax copy of a letter bearing the date of May 22, 1961.—A. Yes.

Q. And I had asked you questions prior to that about a letter of October 16, 1961. Have you found overnight [1188] your office copies of those two letters?—A. I have not. I have asked Mr. Doub. I thought you had the office copies.

Q. No, we do not have them and we would appreciate it if you could find them.—A. All right.

Q. Now that letter indicates, does it not, or states in the letter of May 22 which I have just handed you, that a check "can be mailed at an early date."

* * * * *

Q. And you received after May 22 Government exhibit 13 which is a check bearing date of May 25, did you not?—A. That is correct.

Q. But, is it not a fact, Congressman, that you testified yesterday on cross examination that there was no letter sent for the purpose of receiving that check of May 25?—A. Well, if I did, I was incorrect. Here is a letter of the 22nd.

Q. And you said that there had been only conversations with either Mr. Edlin or Mr. Robinson in order for you to receive that check of May 25, 1961, do you recall that testimony?—A. I do, yes.

Q. That testimony, then, was not correct yesterday?—A. Not according to the letter. It seems that I had called that to their attention by letter, too.

Q. Do you have any independent recollection, Congressman, either of writing that letter to them requesting that check, or of not writing that letter requesting the check?—A. No, I have no recollection. I found it in my file. I turned my file over to the FBI.

Q. You turned over photostatic copies or thermofax copies of portions of your files, is that right?—A. I think that is true, yes.

Q. You never turned over to the FBI the original office copy of either that letter or the letter of October 16?—A. That I do not know.

[1189] Q. Congressman, I show you Defendant Johnson's Exhibit No. 95 which is a handwritten note of Mr. Robinson bearing date of October 25, 1961. You testified on direct examination, did you not, that that handwritten letter was written after your return because you were very indignant?—A. That is correct, yes.

Q. And yet that letter was—or that photostatic copy thereof—turned over by you to the FBI in January of 1962 without any explanation as to the date on that particular letter, was it not?—A. I do not know of any explanation. I think that there was a subsequent letter turned over, too, which was of February.

Q. Before that February letter was received by you sometime in January of 1962, when you were first visited by the FBI, you turned over that handwritten letter or a copy of it, did you not, without any explanation as to the date of that letter?—A. I think it is true. I do not think I explained any of the letters.

Q. And is it not also a fact, Congressman, that you testified about that letter before the Montgomery County Grand Jury and although the letter was dated in October, you never explained to the Montgomery County Grand Jury that it was actually written some two months later?—A. Would you refer to the number, please?

Q. I think you will find that testimony at the top of page 40 of the Montgomery County Grand Jury transcript.—A. I did and on page 40, if you continue to read, I told the jury that later I did not feel satisfied with this statement. Then under February 28, 1962, I had a more detailed letter from him.

Q. And why did you tell the Montgomery County Grand Jury you were not satisfied with that handwritten letter?—A.

Well, on the appearance of it it was the only hand appearance that I had written, or I had received. As to the date I was not satisfied as to the date, knowing that it was dated back.

[1190] There were also words left out. It was not a very coherent letter. Therefore, I asked for a detailed statement which I later received, typed, from Mr. Robinson.

Q. Congressman, is it not a fact that you told the Montgomery County Grand Jury that your dissatisfaction with that letter was because it left out several words and because it was very poorly written but with no mention of the date of that letter or any dissatisfaction as to the date?—A. I did. That was some of the reasons for it. But I did get a subsequent letter.

Q. You never told the Montgomery County Grand Jury, did you, that you were upset or concerned about the date which appeared on that handwritten letter?—A. I do not recall saying that, no but I told them of a subsequent letter.

Q. Isn't it also a fact that you testified about that letter before the Federal Grand Jury in September of 1962, again without any explanation as to the date on that letter, or your concern over the date?—A. At what page is that?

Q. Pages 131 and 132, Federal Grand Jury transcript.—A. Yes, and I think the jury should know that on page 132 I stated that I did not like the letter, so when I got back I said, "I do not feel this is a proper explanation of the money. I want another explanation letter from you."

So, on February 28, 1962, Mr. Robinson gave me a detailed letter which I wanted for my tax records.

The COURT. Now, it is not quite clear in the record what you were reading from the Grand Jury testimony, and what you were testifying.

By Mr. MARION:

Q. My next question is, is it not a fact that you never told the Federal Grand Jury, even though you were questioned about the time of the receipt by you of that letter, you never told the Grand Jury that you were concerned with the date that appeared on that letter?—A. I did not. [1191] I merely said I did not like the letter which I considered full explanation.

Q. You requested the proper explanation?—A. Yes, that accounted for the other letter.

Q. Congressman, in early March of 1961, according to your testimony, you were in Miami with your wife and your children at the Eden Roc Hotel?—A. That is correct.

Q. And that was during the period, was it not, from March 3, 1961 to March 6, 1961?—A. That is correct.

Q. And did you not also testify that, while you were in Miami in March of 1961, you met with Mr. Robinson on one or two occasions at which time there was a discussion of a memorandum which related to a man by the name of James Bridges?—A. Yes.

Q. That this discussion involved, did it not, alleged threats or accusations which Mr. Bridges was said to have made concerning Mr. Edlin?—A. That is correct. According to the letter that Mr. Robinson wrote.

Q. And you went over that memorandum with Mr. Robinson while you were in Miami, is that correct?—A. That is correct and I had completely forgotten about it until I was refreshed in my memory about it.

Q. You were questioned specifically about that before the Federal Grand Jury, were you not?—A. I was and I had no recollection at that time. I had to be refreshed by the letter I received and talking with Mr. Robinson.

Q. Now, were you refreshed by the letter you received or were you refreshed when you saw the Government put that letter in evidence at this trial?—A. No, I was refreshed by Mr. Robinson and I think he told me of the letter, too.

Q. When did he tell you of these circumstances?—A. I cannot say when. It was some time prior to the trial when I was making my own investigation.

Q. Let me ask you whether you testified as follows before the Federal Grand Jury——A. What page?

[1192] Q. Regarding your Miami trip and I am reading from the bottom of page 52.

> Q. Was there a possibility that you may have met with Mr. Robinson and his father on another matter when you were in Florida or perhaps a drafting of a memorandum?—A. No.
>
> Q. No other matter like that?—A. No.
>
> Q. You did no other work on matters which directly or indirectly pertained to First Colony Savings and Loan or Mr. Edlin?—A. No. Actually, to be perfectly frank this was really a pleasure junket for me. I promised the

wife and children to take them to Florida. I went more, just one conference or two, just as I say. I would sit in there because there was really no business transacted.

Q. Aside from the two or three business meetings which you sat in on?—A. I believe it was only one.

Q. Aside from the one meeting which you sat in on involving Florida developments or Florida real estate, did you transact any other business while you were in Florida?—A. I do not recall any.

Q. Did you give any other legal advice?—A. Not to my——

Q. Or assist in any type of draftsmanship?—A. I do not recall any. I did do this. I told Mr. Robinson I wanted to see his offices and he did show me his offices there and I think that was the thing. And, in fact, I do not know whether I met his father or not. I may have, yes, in a general discussion we talked about everything generally but I don't recall any particular work there.

Is that your testimony before the Federal Grand Jury?—A. That is my testimony, yes.

Q. You also stated on direct examination, did you not, Congressman, that the possibility of your visiting the De-[1193] partment of Justice was never discussed with Mr. Robinson while you were in Miami?—A. That is correct.

Q. Is it possible you had forgotten about that, also?—A. It is not.

Q. Is it not a fact that Mr. Bridges, whom you did discuss while you were in Miami, was one of the defendants in the First Colony case?—A. He was, but it was not the nature of that discussion.

Q. And, is it not a fact that Mr. Edlin had already told you prior to the time you went to Florida in March of 1961, of Mr. Bridges' alleged motivation of the indictment in the First Colony case?—A. He could have.

Q. Is that not your testimony on direct examination?—A. My testimony, as I recall, that he brought that out several times. The first time I would not state when.

Q. Isn't it a fact you testified already on direct examination that he told you of that prior to your March trip to Miami?—A. In February, yes.

Q. Now, do you have any independent recollection of when he told you t[illegible]?—A. My recollection is it would be the last of February wh[illegible] had the report on Mr. Edlin.

Q. And you do recall now that you did discuss with Mr. Edlin in February, Mr. Bridges and the motivation which he is alleged to have had for this indictment?—A. That is correct.

Q. And, while you were in Florida in Miami in March of 1961 you asked for and you received a copy of the First Colony indictment, did you not?—A. It is true. Because prior to leaving when we were told as to Mr. Edlin's involvement, I asked to see the indictment. Mr. Robinson said it was in Florida. He gave me a copy which I did not read in Florida but brought it back with me.

Q. And after you left Florida, you received a letter from Mr. Robinson dated March 8, 1961, did you not, in which [1194] Mr. Robinson expected you to redraft a memorandum which had been given you in Miami?—A. On the Bridges matter.

Q. Yes, and this Bridges matter was one of the matters which was later incorporated in the bulky memorandum which was delivered to the Attorney General, was it not?—A. That I do not know.

Mr. MARION. May I have Government exhibit 86, please?

By Mr. MARION:

Q. I show you first of all the short memorandum, Government exhibit 86–B, the two page memorandum, and direct your attention to the last paragraph on the first page and ask if that refreshes your recollection that the Bridges matter was included in the memorandum delivered to the Attorney General?—A. Which paragraph?

Q. The last paragraph on the first page which carries over on to page 2?—A. No, it does not refresh my recollection because, in dealing with the Bridges matter, there was no discussion in Florida during the March meeting of any visits to the Attorney General.

Q. Well, does that refresh your recollection that the Bridges matter was included in the material which was delivered to the Attorney General?—A. No, I say it does not.

Q. Let me show you Government exhibit 86.

* * * * *

I call your attention to the first, or the page beginning with the introduction, Congressman, beginning at the paragraph

at the bottom of that page, continuing over on to the second page, and ask if that refreshes your recollection that the Bridges matter was included in the material which was given to the Attorney General?—A. Mr. Marion, this incorporates certain matters dealing with Bridges but it does not refresh my recollection as to any discussion of the matter in Florida.

* * * * *

[1195] Q. The question, Congressman, is whether or not that refreshes your recollection that the Bridges matter was included in the material which was later submitted to the Attorney General?—A. Yes, it does on that.

Q. And isn't it a fact that you told both the Attorney General and Mr. Miller about Mr. Bridges and the fact that he was alleged to have been a disgruntled employee?—A. I told both of them, the Attorney General and Mr. Miller.

Q. Congressman, do you have the original letter which was sent to you by Mr. Robinson dated March 8, 1961 copy of which was introduced in evidence by the Government?—A. I do not. Maybe Mr. Doub has it.

Q. Have you made a search of your file for that letter?

Mr. DOUB. We do not have that letter.

Mr. MARION. You don't have it?

By Mr. MARION:

Q. Do you know where the original of that letter is, Congressman?—A. I do not.

Q. Do you know what happened to that letter after you received it in March of 1961?—A. I do not. I know, Mr. Marion, that I received the letter but I do not know where the original is.

Q. Do you know you received certain enclosures with the letter?—A. That is true.

Q. And you do not have those enclosures, is that correct?—A. I do not.

Q. Do you know where those enclosures are?—A. I do not.

Q. Now, Congressman, as I understand your direct testimony, after you had returned from Florida in March of 1961, there was a meeting held at which you were present, Mr. Edlin, Mr. Robinson, Congressman Boykin and per-[1196]haps Mr. Caudle, at which you suggested to Mr. Robinson that, if there were to be a meeting with the Attorney General for a review of the First Colony case, that you would need a memorandum because the Attorney General might request such a memorandum; was that your testimony on direct examination?—A. It

was and I told him that I did not know enough about the case, that I would need some information.

Q. And this conversation at which those people were present took place, did it not, sometime between March 6, 1961 and March 20, 1961, when you received from Mr. Robinson a letter enclosing the first portions of the draft of that memorandum?—A. That is true but I do say there had been a previous meeting with Congressman Boykin and myself in which it had been suggested that the Attorney General should review on the merits, the case in question.

Q. Now, do you have an independent recollection at this time, Congressman, of this meeting about which I speak between March 6, 1961 and March 20, 1961?—A. In what respect?

Q. Do you remember, independently, of any memorandum or conversations with anyone else this particular meeting about which you have testified?—A. No independent recollection, more than the fact that there was a meeting.

Q. Do you have an independent recollection of the facts which you stated on direct examination?—A. Independent, yes.

Q. And you also testified on direct examination, did you not, that you received the original letters from Mr. Robinson which are in evidence as Government exhibits 93, 94 and 95, letters dated March 20, March 21 and March 22?—A. I did.

Q. And you received the original of each of those letters in Washington?—A. I did.

Q. And each of those letters enclosed, did it not, a portion of the draft of this memorandum, Government [1197] exhibit 86 which was subsequently submitted to the Attorney General?—A. That is true.

Q. Now, do you at this time have an independent recollection of receiving those letters and receiving these copies of this memorandum, those portions of this memorandum from Florida?—A. I did receive them. But nothing more than the fact that they were received.

Q. My question is, do you now have an independent recollection of having received those letters at the time they were in fact received in March of 1961?—A. As I say, I do acknowledge receipt of them. I do not have the originals.

Q. You do not have the original of any of the three letters?—A. No, I do not.

Q. Do you know where any of those three letters are?—A. I do not.

Q. Do you know what happened to any of the letters?—A. I do not. But the copies are in evidence which are the copies of the letters I received.

Q. And you also testified, did you not, Congressman, that Mr. Robinson had under preparation this memorandum at the time of your first visit at the Attorney General's office on March 25, 1961?

The COURT. What is the question?

Mr. MARION. My question is, is it not your testimony on direct examination that Mr. Robinson had under preparation at the time of your first visit to the Attorney General this memorandum, government exhibit 86, which was subsequently delivered by you to the Attorney General by special messenger under cover of a letter dated March 28, 1961?—A. That is true, but I did not have the memorandum on March 25.

Q. Well, what had happened to the memorandum between the time you received the portions of its with the [1198] letters dated March 20, 21 and 22, between those dates, and March 25 when you made your visit to the Attorney General?—A. My best recollection is that Mr. Robinson did not finally prepare a memorandum until after the 25th of March. He had portions for me. As to what happened to those portions, Mr. Robinson could testify. I do not know.

Q. Now, Congressman, I understand your testimony just a moment ago that you received in three letters, three portions of this draft or of this memorandum, Government exhibit 86, and you received those letters, a portion at a time in each of three letters dated March 20, 21 and March 22?—A. That is correct.

Q. So, you had the total memorandum in your possession, did you not, prior to March 25, 1961?—A. I would not say I had the total memorandum.

Q. What did you do with the portions of memorandum which were delivered to you under cover of those three letters?

* * * * *

By Mr. MARION:

Q. You did testify, did you not, Congressman, on direct examination that you suggested to Mr. Robinson certain changes that ought to be made in what now appears as Government

exhibit 86.—A. I did. That was on March 28 when Mr. Robinson had the memorandum in my office.

I glanced over it. There were some rather derogatory remarks in respect to the Justice Department. I told him I did not think that was proper, and those were the changes which I think were in about two or three places.

Q. As a result of your suggestion, then, to Mr. Robinson if I understand your testimony, the pages which are now identified as 86–C which appear to have been typed on a typewriter in your office, were inserted as replacement [1199] pages for other pages which had originally appeared?—A. That is true. Those contain the remarks pertaining to the Justice Department.

Q. And did you not also testify on direct examination that you suggested to Mr. Robinson that he prepare a brief outline of the case on other than legal points and that, as a result of that suggestion by you, Mr. Robinson prepared this two page memorandum which now appears as Government exhibit 86–B?—A. I did. The Attorney General requested a memorandum. Mr. Robinson submitted the very detailed memorandum. I looked at it. To be very frank with you, it was so long I did not read it. I told him I was sure the Attorney General would not read it. That he should have just one or two pages to explain what was the nature of the merits of the case.

Q. You read it sufficiently, did you not, to ascertain that there were remarks derogatory to the Justice Department in that memorandum?—A. I read sufficiently—I think it appeared on the first page—then Mr. Robinson stated I also have included such remarks on other pages. He then made the corrections on the other pages.

Q. Isn't it a fact that the first page which was corrected and changed was page 9 of the memorandum?—A. I do not recall.

Q. Would you glance at Government exhibit 86 and see whether that refreshes your recollection?—A. Yes, on page 9.

Q. Congressman, let me ask you if you testified as follows before the Federal Grand Jury, beginning on page 82 of the Federal Grand Jury Transcript:

> Q. Now, was there anything about the meeting with the Attorney General which made you more optimistic in any way or not?—A. No, and what happened there was that he suggested a memorandum and——

[1200] Q. He suggested that you prepare a memorandum?—A. Yes. He said to send it over by personal messenger to him.

Q. Did he outline to you what he wanted the memorandum to cover?—A. No, he did not.

Q. He left that up to you?—A. Yes.

Q. Did you prepare such a memorandum?—A. I did not.

Q. Was a memorandum prepared as a result of that visit?—A. It was. And, as I stated, Congressman Boykin and myself knew very little about Mr. Edlin. We had no knowledge. So I got in touch with Mr. Robinson and I told Mr. Robinson that we had been over—he knew we had been over; I said, "the Attorney General wants a memorandum, a full memorandum." He later met me in my office and gave me this tremendous report.

Q. Then you sent it over?—A. No, I did not. I took a glance at it. I told him it was entirely too long and in too much detail, that I certainly was not going to read it, and I was sure the Attorney General would not. And I believe with him was Mr. Caudle at the time.

Q. This was after your first meeting with the Attorney General?—A. Yes.

Now, is that your testimony?—A. Yes, it was. It was substantially what I told you today.

Q. And, reading from page 84, was this your testimony:

Q. How long after your first visit with the Attorney General was it that you delivered him the memorandum, approximately?—A. I don't know—probably a week or two, or something of that sort. I don't remember.

Was that your testimony at that point?—A. It was and I state again that at the time I appeared before the Grand [1201] Jury, we were in the closing days of the session of Congress. Day and night. Furthermore, it was a campaign, and I did not have a chance to review the letters, the correspondence, as fully as I have since then.

Q. And did you testify as follows, beginning on page 85, Congressman:

Q. Congressman Johnson, you looked over Grand Jury Exhibit No. 2—

which I think Congressman, was this document, was it not, before the Grand Jury?—A. Which page is this?

Q. Page 85?—A. Yes.

Q. [Reading.]

Congressman Johnson, you looked over Grand Jury exhibit No. 2 during the luncheon recess and I ask you, is that your letter and is that the memorandum which you had delivered to the Department of Justice?—A. That is my letter. This is in response to the request of the Attorney General. The contents, however, are not my contents because, as I stated previously, I did not know what to write. I knew nothing about Mr. Edlin's situation. I asked Mr. Robinson who was closer.

Q. You mean you did not actually prepare the memorandum, you merely delivered it?—A. Delivered it is all. That is right.

Q. Now, Congressman, you stated that this memorandum was not prepared prior to the first visit to the Attorney General, did you not?—A. That I do not know. To my knowledge, it was not because I never had seen it. I never had seen it until—

Q. It was possible then that it was prepared prior to that time?—A. Possibly but not to my knowledge.

Q. When was the first time you had seen any part of this memorandum?—A. I don't recall.

[1202] Q. Was it after the first time you saw the Attorney General or before?—A. To the best of my knowledge, it was after. As a matter of fact, I am not familiar with the memorandum.

Q. Is it your testimony that the Attorney General asked you to prepare a memorandum or to have such a memorandum prepared, or did you suggest that you had such a memorandum and wanted to give it to the Attorney General?—A. At the time we were at the Attorney General's office, to be very frank, I did not know too much about the whole thing. We explained the whole transactions to him.

Q. The whole transactions?—A. I mean as far as we knew about the land deal and so forth, and about Mr. Boykin. He suggested a memorandum. I do not and did not know fully what he intended to comply with that request. I suggested to Mr. Robinson to get some

sort of memorandum because very frankly I never had any particular interest in the meeting. I did not know how the Attorney General could fit into this picture and I was there more or less because Mr. Boykin asked me to go along and through courtesy, because I never had any hope that he would work out or could come up with any idea that could save the development.

Was that your testimony?—A. That is correct, yes.

Q. And did you further testify on page 86 as follows:

Q. You visited the Attorney General on March 25 and this letter is dated March 28. Don't you think that was a little short notice to prepare such a lengthy memorandum or not?—A. As I say, I did not prepare it. Presumably he gave me something he already had. I do not know. But I know nothing about that.

Now, was that your testimony?—A. That is true.

Q. And on page 143 of the Grand Jury transcript.

* * * * *

[1203] Q. Did you not testify further before the Grand Jury as follows, beginning on page 143:

Q. Directing your attention to Grand Jury Exhibit No. 2 which is the material which you delivered to the Attorney General, stapled to your letter which is a short memorandum which was put on top of the synopsis of the Colony indictment, I note that it appears to be typed in the same type; did you prepare that memorandum?—A. No, I did not. That was Mr. Adelson, I mean, Mr. Robinson.

Q. Did he dictate it in your office? I notice——. —A. I think he did. He came over with this memorandum and I told him I did not think that was what the Attorney General wanted, and I thought he wanted some additional information, so I said, "You go ahead, because I am not signing any memorandum."

Q. This big blue-backed memorandum is entitled "Synopsis of Colony Indictment." I notice that some of the type is different. For instance, it appears that the first part was not typed by the same typewriter that typed the second part. Do you have any explanation for that?—A. No, I don't know where it was typed. I want to tell you, I haven't read it, either.

Q. It is entitled "Synopsis of the Colony Indictment." Do you know basically what it contains?—A. I presume, yes, basically.

Q. What does it contain?—A. As to the pending cases against First Colony.

Q. Does it explain why it is a faulty indictment or why it was?—A. I think it does.

Q. The memorandum which is attached to your letter to the Attorney General. Let me read the memorandum to you and then ask you what you feel the objective of this memorandum was.

Parenthetical note: "(The memorandum was read to the witness.)"

[1204] Q. Did you read this memorandum which was affixed to your letter?—A. Yes.

Q. And you think it accurately sets forth the purpose of the deliverance of this synopsis of the Colony indictment?—A. Well, I don't think it hardly does.

Q. Then why would you attach it to it if it did not?—A. What happened was this: As I say, the Attorney General wanted a memorandum. I had forgotten. Presumably, he wanted something on the indictment. Robinson was requested and it was sent, whatever he prepared there, because to me I think the point was more to the question of the FHA approval than the publicity and so forth.

Q. What do you mean in connection with the FHA?—A. That is securing the FHA approval of First Continental and the loans.

Q. What would you say the true purpose of the visit to the Attorney General was?—A. May I summarize that by saying I felt when Congressman Boykin asked me to go over there, there was no purpose; that nothing could be accomplished at the meeting.

A. "That nothing would be accomplished," not "could be."

Q. I am sorry.

That nothing would be accomplished. At the meeting I felt the same thing and following the meeting as a result, I took no interest to prepare any memorandum myself because I just felt there was—it was a waste of time.

Q. What was your purpose in——A. I submit it because the Attorney General wanted a memorandum. He requested it.

Q. He requested a detailed memorandum of each [1205] and every paragraph of the indictment?—A. Presumably that was what it was and that is why it was sent.

Q. And this was prepared, you say, from the time you saw the Attorney General on March 25 until March 28, when you delivered this, was the time this memorandum was prepared?—A. I don't know when it was prepared. It was given to me and I sent it off.

Was that also your testimony before the Grand Jury?—A. That was my testimony.

Q. Congressman, now you testified on direct examination, as I understand, and you correct me if I am wrong, that your original purpose of going to see the Attorney General in March of 1961 was to enable him to review the First Colony case on its merits to determine whether the case had merit or not?—A. Basically, that is true.

Q. And is it not a fact that when you were first interviewed by the FBI on January 10, 1962, that you told the FBI agents who interviewed you that the First Colony mail fraud case was never discussed with the Attorney General at the time of your visit on March 25?—A. If I did, it was not correct.

Q. You would not deny that you told them?—A. No, but, as I say, if I did, it was not correct.

Q. Didn't you tell the Federal Grand Jury in substance, that the real purpose or the dominant purpose of your going to the Attorney General was to have him review the FHA's motivation in refusing to approve First Continental Savings and Loan Association as an approved lending istitution?

* * * * *

Q. Did you testify as follows on September 25, 1962 before the Federal Grand Jury, beginning on page 79:

Q. What would you say was the purpose of your [1206] going to see the Attorney General, the real purpose?—A. To look into the whole matter and investigate.

Q. Look into the whole matter of what?—A. First whether or not the reports that Justice had were correct reports on Edlin.

Q. On Edlin?—A. Yes. Whether or not he had—which we had a copy there of two previous convictions instead of one in connection with some savings and loans in Chicago. I believe the Corona, which was a bad report. How serious the present situation was, and whether or not these were matters that should prevent FHA from proceeding with the approval of the lending institution, and particularly, whether or not Mr. Edlin was connected with First Continental. May I say at this point, Mr. Edlin, of course, always made an issue that there was some pressure group preventing him and and had means of preventing him from this development there and we, frankly, asked and explained on that, whether or not there had been any outside interference.

Q. What was the outcome, or what did you expect or hope would result, or happen or occur as a result of your visit to the Attorney General's office?—A. Well, if I may say, he replied, if I can go on there, I will come on to what we expected.

And then there is a break on another matter, and continuing from the middle of page 80.

Q. All right, go ahead.—A. You asked me what I felt we——

Q. What you expected to accomplish.—A. We did have a tremendous development there under way which meant a great deal for Maryland and it was whether or not there was anything to the pending case, whether there was any pressure outside being brought to hold up the FHA and any other information that could be determined by these parties who [1207] were negotiating whether to call off the loan for development or not.

Q. What was the most optimistic hope as a result of your visit, of what would be done?—A. I don't know what was the most optimistic. To be perfectly honest with you, I did not think anything would be accomplished but when I was asked to go, I went along with Congressman Boykin and I did not think anything would be done.

Q. Let me go back a moment. It is my understanding that the dominant reason you went to see the Attorney General was because the FHA had been withholding their approval on a loan from First Continental Savings and Loan?—A. Approval of the lending institution.

Q. Yes, of First Continental Savings and Loan Association. That was the dominant purpose.—A. Yes, and general approval, too, of site location, but the lending institution approval was the principal thing.

Q. You hoped the Attorney General would look into the matter and, as a result of that, he would clear up the matter with the FHA so that First Continental would be approved as the lending institution and——A. I was hoping. Actually, as I say, I had no thought of anything being done. Congressman Boykin called me a senior Congressman, and I went over with him but I did go. If anything would have been hoped, it would be that there would be no report linking Edlin with First Continental. Because that was one of the objections, too, that he was a part of First Continental and Edlin kept telling us over and over again that he was not.

Q. And if that conclusion were reached by the Attorney General, then that, in turn, would release the First Continental to become an approved [1208] lender and therefore, permit the FHA financing?—A. Presumably.

Q. So that the development could go ahead?—A. Yes.

Now, was that your testimony before the Federal Grand Jury?—A. It was, but I do think that you are taking out of context the letter to the Attorney General on March 28. The memorandum states that over a period of months negotiations had been under way, dealing with the financing of the residential and commercial developments, and so on, by and through First Colony Savings and Loan Association, bringing it to the Attorney General's attention. Also, you failed to read page 77 in which the purpose is set forth, in which I explained to the grand jury that Congressman Boykin went into full detail as to what the development would mean in Southern Maryland, that the development there would mean some payment of $2 million in taxes by him to the Government; that he was personally interested in the transaction.

And I went on to say I was anxious to help Congressman Boykin; that I was assisting in the legal matters and I, too, felt it would be a wonderful thing for my state of Maryland.

Q. Keep reading, Congressman.

* * * * *

Q. Congressman, with respect to the visit which you made to Mr. Miller at which time you introduced Mr. Miller to Mr. Charles Meyer, Mr. Edlin's former probation officer, you testified as I understand that Mr. Meyer had been contacted first by Mr. Edlin from the telephone in Congressman Boykin's office some time shortly after a meeting which you and Congressman Boykin had with Mr. Miller on June 12, 1961, and that in the course of that telephone conversation Congressman Boykin also spoke to Mr. Meyer.—A. I so testified. Whether he spoke, I do not know; Congressman Boykin did hear certain conversation [1209] over the telephone because at the time that the call was made there was conversation between Mr. Edlin and Mr. Meyer. Congressman Boykin was asked to hear the conversation. What was said by Congressman Boykin, I do not recall.

Q. In other words, you know that he at least had his ear to the telephone, and was apparently listening, but you do not recall specifically anything he may have said?—A. I could not hear.

Q. Let me ask you if you testified then, as follows before the Federal Grand Jury, on September 25, 1962.

Mr. DOUB. What page is that?

Mr. MARION. Beginning on page 92.

> Q. What was the purpose of your visits to Mr. Miller?—A. Oh, on occasions it was on this. On one occasion there was a man from Chicago who is head of the Federal Parole Office.
>
> Q. Mr. Meyer?—A. I think his name is Meyer, who telephoned and stated that the had been in or that Mr. Edlin had been in touch with him. And——
>
> Q. Mr. Meyer told you that Mr. Edlin had been in touch with him?—A. Yes.
>
> Q. How did you meet Mr. Meyer?—A. He came to my office.
>
> Q. He did? Did you ever talk to him before then?—A. No.

Q. You never met him?—A. I never met him before.

Q. Who brought him to your office?—A. I don't know whether Mr. Edlin or Mr. Robinson, or whether he came in alone but he came to my office.

Q. And for what purpose did he come to your office?—A. He understood there had been a false report.

[1210] Q. Mr. Meyer understood.—A. Yes, that was his term there. He wanted an opportunity to talk to someone in Justice.

Q. So he asked you?—A. I don't know whether I called or Congressman Boykin called over to Mr. Miller. Mr. Miller said that he would like to see it. That he, himself, woud not be the proper one because he wanted to take down the transcript and for him to see someone else.

Q. What was Mr. Meyer's official capacity?—A. He represented himself to me as being in charge or one of the heads of the parole division.

Q. And that is a division of what branch of the Government?—A. The Department of Justice.

Q. Why would Mr. Meyer come to you and request that you make an appointment for him?—A. I don't know.

Were you at all suspicious?—A. Well, not suspicious at all but——

Q. Did you think it was unusual? Did he come in alone and unannounced, Congressman?—A. That I don't remember.

Q. Did Mr. Edlin advise you beforehand that he was coming?—A. I don't recall, offhand.

By Mr. MARION:

Q. Did you so testify before the Federal Grand Jury?—A. I did, yes.

Q. And, as a matter of fact, Congressman, it is true, is it not, that the day before Mr. Meyer came to Washington on June 15, on June 14th, you had called Mr. Miller and made an appointment to see Mr. Miller in connection with Mr. Meyer's visit the following day?—A. In answer to that, I notice his log shows a call by me but I have no recollection of calling the day before.

[1211] Q. It shows——A. I thought he was called the day Mr. Meyer was in the office.

Q. It shows a call was made to set up an appointment does it not, on June 14, the day before Mr. Meyer's visit?—A. As I say, his log shows that but my recollection is he was called the day of Mr. Meyer's visit. I could be in error.

Q. Do you have an independent recollection of when Mr. Miller was called to set up that appointment?—A. No, as I say, I thought he was called the day Mr. Meyer was in town.

Q. My question is, you say you thought it was the case. Do you have any independent recollection?—A. No, I have no independent recollection.

Q. You have testified on at least five occasions in the course of your direct examination that at the time you visited the Attorney General and during the time you visited Mr. Miller, that you advised them of your representation of First Colony Savings and Loan, of First Continental Savings and Loan, of Charles County Land Company, and of Leisure City Land Company. Is that correct?—A. That is correct.

Q. And, is it not a fact that you told the FBI agents who interviewed you on January 10, 1962, that you had never represented First Colony or First Continental as such but may have indirectly regarding Cassell and Kastner?—A. To make the correct statement, in my statement to the FBI, I stated I had never represented Mr. Edlin. Neither had I directly represented the loan associations. It was all through Mr. Robinson.

Q. And your prepared statement of January 23, 1961 says, does it not, Congressman, in the last paragraph on page 12-A, "At no time did I or my law firm represent Mr. J. Kenneth Edlin, nor directly either First Continental Savings or First Colony?"—A. That is true, Mr. Marion. I told you that my representation was through Mr. Robinson.

[1212] Q. And didn't you tell the Federal Grand Jury in substance that you felt you did not want to represent a savings and loan association?—A. That is publicly, yes.

Q. I didn't understand you.—A. Yes.

The COURT. He said "that is, publicly."

The WITNESS. Yes, publicly.

By Mr. MARION:

Q. Let me ask you if you testified as follows before the Federal Grand Jury?—A. What page is that?

Q. Beginning on page 47, and this relates back to the period of time in August or September, 1960, Congressman:

Q. Why did you want legal services paid for by Mr. Robinson personally rather than his clients?—A. Well, he had—he seemed to represent so many parties and I felt that it was up to him as any other associate that I would like—he was an attorney.

Q. But why didn't you want to be paid by the First Colony Savings and Loan Association when you reviewed a loan agreement for them? Why did you want to be paid by Mr. Robinson rather than the First Colony Savings and Loan or by Mr. Robinson rather than the First Continental Savings and Loan?—A. Well, I thought that would be proper because as an attorney, that was like any other attorney, that I would look to him.

Q. You thought he was more solvent, perhaps, and you could look to him better than those lending institutions?—A. Well, I didn't know too much about his company in Florida and so forth.

Q. What about the Maryland association?—A. The Maryland—I didn't know too much except the statement showed they were a good solid company.

Q. Did you know the first——A. And furthermore, [1213] too, that I did not feel that I wanted to represent a savings and loan association.

That was your testimony?—A. Yes, that was my testimony.

Q. Is that still true, Congressman?—A. That is true.

Q. And is it not a fact further, Congressman, in your prepared statement of January 23, 1962, in reference to the first meeting with the Attorney General, and I will read from page 11 of your prepared statement:

> At this meeting it was made clear to the Attorney General that Congressman Boykin and I were not there in the interest of any litigant.

Is that your testimony?—A. It was my testimony because we were not there paid by any individual or corporation and I read you my testimony before the Grand Jury which I think is on page 78.

Q. Yes. Well, let me ask you if you said this before the Federal Grand Jury, reading from page 78:

> I do want to make it clear that I told the Attorney General at that point that Congressman Boykin and I

wanted to make it clear that we were not there in the interest of any litigant.

Did you so testify?—A. Yes, and before, if you read before. I told him that I was helping in the legal matters; that I told the Attorney General.

Q. I will come back.—A. But, again, I state that I was not paid by any litigant.

Q. And on page 88, did you testify as follows:

> During the period of your visits were you still interested in a legal fee rather than a finder's fee for the success of this land transaction?—A. I don't know about the finder's fee because, as I say——
>
> Q. You said it was not?—A. In the beginning, I said nothing was ever decided on it.
>
> [1214] Q. But your legal fees were still hanging, contingent upon the success of the development, the consummation of the development; is that correct?—A. No, it was only as to possibly the amount. If it had been successful, probably a little more but——
>
> Q. How much more?—A. That I don't know. Because we had not discussed a final or even fees in detail.

A. You are not reading correctly on that. "No, I don't know because we had discussed these fees in details."

Q. That is not the way my copy reads.—A. Here is mine.

* * * * *

> Q. During the period of your visits were you still interested in a legal fee rather than a finder's fee for the success of this land transaction?—A. I don't know about the finder's fee, because, as I say——
>
> Q. You said it was not?—A. In the beginning I said nothing was ever decided upon.
>
> Q. But your legal fees were still hanging, contingent upon the success of the development, the consummation of the deal, is that correct?—A. No, it was only as to possibly the amount. If it had been successful, probably a little more, but——
>
> Q. How much more?—A. That I don't know, because we hadn't discussed a final or even fees in detail. I do feel that I should mention that at the very first meeting with Mr. Miller I told him that I wanted it distinctly understood that we were not there in the interest

of any litigant, did not want to interfere in any way with the conduct of his office.

Did you so testify?—A. I did, and I think I should mention that the fees referred to, we had the $25,000, which I had not been paid. At the time we had a New York [1215] group who were interested in taking over the development; that if that deal had gone through, I would have gotten my full $25,000.

As to Mr. Miller, again I state that I had no interest as a paid litigant or as a paid client with Mr. Miller at the time of the conference.

Q. And you had read in answer to one of my prior questions, Congressman, a moment ago, a portion which began on page 77, and you stopped with the line "for my State of Maryland." Did you not also testify, continuing at that point:

> Q. Did you tell the Attorney General whom you represented?—A. No, I did not go into detail, more than the fact that I was interested as counsel there.
>
> Q. As counsel for whom?—A. I did not go into detail, but that I was attorney, and that I was also interested in helping Congressman Boykin, and furthermore that I was interested in seeing the development there in Southern Maryland.

A. Yes, that is my statement.

Q. And is that the statement as to your testimony, is that correct today?—A. It is correct to the degree there that more was stated than what was stated in this before the grand jury.

Q. Was it correct that you did not tell the Attorney General whom you represented?—A. I told the Attorney General that I was representing through Mr. Robinson the lending institutions. That was First Continental and First Colony. Later I confirmed by letter of March 25th that First Colony was the lending institution.

Q. Is your statement in the grand jury testimony on page 77 that you did not tell the Attorney General whom you represented, is that true?—A. My statement was I didn't go into detail.

[1216] Q. Was this statement true which you told the grand jury?—A. It was true, yes, but I did not go into detail.

Q. And that you did not tell the Attorney General whom you represented?—A. I told him that I was interested as at-

torney for the lending institutions; that I wanted to help Maryland. It meant a lot to Maryland, and furthermore, that we had been told that there was merit to the request for the review.

Q. Now, Congressman, the proposed loan about which you have testified, which was being discussed at this time in approximately March of 1961, was a proposed loan from First Continental Savings and Loan Association to Desser & Garfield, is that not correct?—A. It is correct to the degree that there would also be other participation. As I testified, it was too large for one lending institution.

Q. And does not the loan agreement which you produced in evidence, Defendant's Exhibit 67, the final draft of that proposed loan agreement, indicate that the loan is to be made by First Continental Savings and Loan Association?—A. That is true, but again I state that in the letter to the Attorney General, First Colony was then substituted as the lending institution.

Q. Let me ask you if you testified as follows before the Federal Grand Jury, beginning on page 73: Question:

> There came a time in 1961 when you either alone or accompanied by Congressman Boykin or Mr. Robinson had occasion to visit the Department of Justice, is that right?—A. There was.
>
> Q. And will you explain to the jury the circumstances of that?—A. Yes. I am very happy to. One, and perhaps the main problem to arise at the time of the loan negotiation, we have gone into the Desser & Garfield, where they were asked, they were to borrow money for this development from First Continental. The problem arose to secure FHA approval. I may say that land planning and site location [1217] had to be approved by FHA, but more important was approval of the lending institution. In this case it was First Continental Savings and Loan Association, and without such approval, why, any development, of course, in this case was virtually hopeless. Congressman Boykin thought that there would be no difficulty in respect to FHA. He suggested—and I am referring to notes which I have here on it—that a Mr. Prince, a gentleman I think I have met—I don't know him too well—and another gentle-

man whose name I do not recall, attend to the securing of the approval of FHA.

Congressman Boykin later told me that FHA just would not approve First Continental Savings and Loan, as it was not under State regulation. After further inquiry it seemed that the real objection was a bad report on Mr. Kenneth Edln as to pending violations, past violations, and that he was connected with First Continental Savings and Loan Association.

Q. At this time did you realize Mr. Edlin was under indictment?—A. I think we at this time just probably had gotten to that when we got that report there on that.

Q. This was approximately in March of 1961, approximately March?—A. Approximately March, yes. I don't know how much earlier I had known that but I did know at this time. We confronted Mr. Edlin and he stated that he had heard of the report, that it was for the most part, false and he could prove it.

Furthermore, he denied categorically that he was an officer, director or stockholder in First Continental Savings and Loan.

These developments more or less brought a close to the negotiations with Desser and Garfield.

Now, did you so testify before the Grand Jury, Congressman?—A. I did, yes.

[1218] Q. And is that testimony true today?—A. It is true. Yes, with additional testimony.

Q. What additional testimony?—A. Well, as to what is stated on page 77 as to what it meant to Maryland, the development. And the other matters referred to.

Q. Is it not a fact that when you testified before the Grand Jury, it was your testimony that the lending institution, involved in the Desser and Garfield proposed loan, was the First Continental Savings and Loan?—A. That is correct.

Q. But the memorandum which you delivered to the Attorney General, Government Exhibit 86–B, which you read from a moment ago, indicates that First Colony was the lending institution, does it not?—A. That is true.

Q. And does not mention First Continental?—A. That is true.

Q. Congressman, in connection with the Desser and Garfield negotiations you produced an exhibit identified as Defendant Johnson's exhibit 71, which appears to be an agreement for sale, and that has some penciled notations that are apparently in your handwriting, does it not?—A. It has.

Mr. DOUB. What is that exhibit number?

Mr. MARION. No. 71.

By Mr. MARION:

Q. And, is it not a fact that those penciled notations in your handwriting were placed on that document after the beginning of this investigation?—A. They were.

If I could see the original—I do not know whether they were inside. This is in regards to the exchange of stock and this was a notation to give the number of shares in exchange. Do you have the original, and I can tell.

Q. This is the original, is it not?—A. This is the original but I thought you might have a photostat.

[1219] Q. No, unfortunately we did not provide a copy.—A. The ones on the front are mine that have been added but I do not know as to the ones inside.

Q. You would not deny that the ones inside might have been placed on there?—A. I do not think they were. I think that the ones on the front were placed there.

Q. Do you know where you got that document, Defendant Exhibit 71, which I just showed you, when you produced it at this trial?—A. No, I do not. Whether I got it from Mr. Robinson or whether from my file. It dealt with the exchange of stock between Lefcourt and the two savings and loan associations.

Q. I show you Defendant Johnson Exhibit 73, which is a copy apparently of an agreement modifying purchase money mortgage and I note that on pages 3, 4, 5, and 6 there are certain penciled notations. I ask you to state whether or not those were not placed on that document after the beginning of this investigation, with the possible exception of the handwriting on page 4 which you identified on direct examination as not being in your handwriting?—A. There is nothing on page 1, 2——

Q. On page 3 there is a penciled notation in the lefthand margin.—A. Yes, just changing "timber," that is the only thing I see.

Q. On page five there is—there are some notations in your handwriting?—A. Very minor. Just a word changed in the explanation, so I would not take the time of the jury, but there is practically no change.

Q. Is it not a fact that the penciled notations on this document which are in your handwriting were placed on the document after the beginning of the investigation?—A. It was. Just at the time of the trial to explain. As I say, there are none there to speak of.

Q. I show you Defendant Johnson's Exhibit 74, which I think you identified as another copy of the agreement [1220] modifying the purchase money mortgage, did you not?—A. I did.

Q. And there are penciled notations in your handwriting, are there not, on the first page?—A. There are, yes.

Q. And on several of the inside pages, page four there are some notes and on page five some penciled notes in your handwriting, are there not?—A. Just very minor ones.

Q. And those were placed on there, were they not, after the beginning of this investigation?—A. I am confident they were. If I am not mistaken, I believe it was the Court who suggested rather than reading these papers, to explain these papers and in order to conserve time, I penciled just——

* * * * *

Q. As a matter of fact, weren't those notations placed on there before you brought your files into Court?—A. That I cannot answer. I know some were put on here after it was brought in.

Q. I show you defendant Johnson's Exhibit 76 which appears to be a copy of a purchase money promissory note, and ask you if the notations in pencil in the lefthand margin were not placed by you on that document after this investigation had begun?—A. Yes, that is only just the year 17, 17 years' repayment.

Q. Now, in connection with the foreclosure which occurred, or the preparations to foreclose the property in Charles County, that matter was assigned to Mr. Carrico for handling, was it not?—A. At my request, I asked Mr. Carrico to do certain legal work for me.

Q. And it was to Mr. Carrico, was it not, that Charles County Land Company assigned the mortgage for purpose

of foreclosure?—A. As the local counsel, subject to my instructions.

Q. And that mortgage was never assigned to you for [1221] purpose of foreclosure, was it?—A. No, there would be no occasion for it.

Q. And under the terms of the original Ernest purchase money mortgage if any attorney were entitled to petition the Court for any petition for the foreclosure it would have been Mr. Carrico, would it not, since it was to him that the mortgage had been assigned for the purpose of foreclosure?—A. Mr. Carrico had the privilege but it was understood beforehand that he would not do so.

Q. It would have been he, would it not, who would have had the privilege of petitioning the Court?—A. He would.

Q. And, as a matter fact, no one petitioned the Court for any fee as a result of those proceedings in Charles County, did they?—A. No, because of my instructions that there would be no fee to Mr. Carrico other than what was agreed upon by me.

Q. And Mr. Carrico had agreed in advance, had he not, to a fee of $1,500?—A. That is correct.

Q. For this foreclosure work?—A. That is correct.

Q. And he subsequently billed Charles County Land Company for $1,500 and costs and he was paid that amount, was he not?—A. Yes.

Q. Let me show you defendant Johnson's Exhibit 31, which is a notice of sale in connection with the Charles County foreclosure, and ask you whether or not the penciled notations on page 1 and on page 4 were not placed there by you after this investigation was begun?—A. Yes, it is only interest and tax.

Q. And what are the penciled notations on page four?—A. Merger of interest.

Q. And are there not citations of cases on page four, Congressman?—A. There are, which I did not cite.

Q. And those citations were placed there after this investigation had begun, were they not?—A. Well, during the investigation.

[1222] Q. After 1962 had begun?—A. Yes.

* * * * *

Q. Congressman, I show you defendant Boykin's Exhibit 11 for identification and ask you if that document does not con-

tain certain penciled notations in your handwriting?—A. It does. I think, for the most part, on page 1, showing the modifications.

Q. And are those penciled notions—strike that.

Were those penciled notations not placed on that document after the beginning of this investigation?—A. That I do not know. If you say they were. I would accept it because I do not know. But they are very minor, only the modifications.

Q. Would you look at page five—I am sorry, page six?—A. Six.

Q. And in the upper lefthand corner would you read the notation which appears there?—A. Yes.

> Bill, Frank wants the timber exception removed. Find out if there is a sale timber agreement.
>
> Except these trees having a diameter of less than five inches for soft wood and eight inches for hardwood.

Q. And the notation on page 7 says what?—A. "Do not like provision."

Q. Page 16, would you read that notation on page 16?—A. "Amended by adding an additional 1060 acres to be selected by mortgagor."

Q. Does it say "amended" or "amend"?—A. It is my interpretation. "Amended."

Q. Read what it says, if you please.—A. That was my interpretation of the shorthand.

> Mortgage to run for 17 years. Also reserves an area 11 feet wide around entire tract for bridle path. [1223] Something should be worked out in event of foreclosure to protect 11 feet as well as drainage ditches. Contingent upon mortgagor should join loan of $2,400,000, 15 years, 6 month construction loan.

Q. You do not deny, Congressman, that those notations were placed on there after this investigation had begun?—A. I don't deny but I don't recall when they were put on.

Q. Do you have doubt in your mind as to when they were placed there?—A. Well, I just do not know.

Q. Let me show you this thermofax document and ask if this is not a thermofax copy of that document which was provided to the FBI on January 19, 1962?—A. Just a minute. I was seeing if I have a clean copy in my file.

I see I have in my file a clean copy. I do not know whether it is from this or not.

Q. When did you obtain that clean copy?—A. I have had it.

Q. Which one was the Thermofax made from?

Mr. MARION. I asked whether Congressman Johnson could tell which photostat the thermofax was made from.

The WITNESS. I couldn't tell. This is a clean copy and I do not know which it is made from.

* * * * *

Q. Congressman, is it not true that you were never consulted as an attorney in connection with any loan transactions or agreements between First Continental and Charles County Land Company, or Leisure City Land Company?—A. I do not think that I was consulted as to the loans themselves, no.

Q. And you did not participate in those loan negotiations or agreements, did you?—A. Now, which specific ones?

Q. Agreements between First Continental or First Colony on the one hand and Charles County Land Com-[1224]pany and Leisure City Land Company on the other hand.—A. I was under the impression I had not. My recollection has been refreshed by Mr. Adelberg who tells me that I did have knowledge of the First Colony from Charles County.

And Mr. Robinson tells me of Leisure City with First Continental. But that was refreshed after this case started.

Q. He told you that you had participated in the Loan transaction between First Continental, was it, and Leisure City?—A. No, not in participation, only as to the paper work.

Q. Congressman, is it not true that at the time a loan agreement was transacted between Leisure City and either First Colony or First Continental that you knew that it was against the law in the State of Maryland for a savings and loan association to lend money secured by land outside of the State of Maryland?—A. Did I know?

Q. Yes.—A. I knew there was a regulation.

Q. And you knew that as early as March of 1961 that it was against the law, did you not?—A. Well, I think it was before that there was a policy, too, as to loaning outside. But I think the new regulation which went into effect in June of 1961, but at the time that this loan was made which I understand was in April, the law was not in effect.

Q. Well, we are talking about the old law. Didn't you know that under the old law that this was against the law and didn't you know it as early as March of 1961?—A. My understanding was it was in the new Act.

Q. Let me ask you if you testified as follows before the Grand Jury, beginning on page 51—the Federal Grand Jury, in reference to the Miami trip in March of 1961?

Q. What lending institutions had the loans?—A. I don't even know on that. I do not even know.

[1225] Q. Were they institutions for which Edlin and Robinson spoke?—A. Well, no institution was ever mentioned. They merely appeared at this conference to review the loans. There were two loans. One I think was in Fort Lauderdale and one in Miami and there were possibly two meetings on that.

Q. These are loans on Florida real estate?—A. They were on Florida real estate.

Are you a member of the Florida bar?—A. No. What happened on that, they wanted me to be present and hear the discussion, which I sat in, I think possibly two meetings. I don't think anything was ever——

Q. Who was present at these discussions?—A. There were some developers in Florida.

Q. Is it possible you could have done any other work in connection with the First Colony Savings and Loan Association, or Mr. Edlin while you were in Florida?—A. I do not know of any but I am glad you brought out the other point because I did raise about loaning in Florida and under our Maryland Law, why, that was out.

Q. You mean they were speaking for the Maryland savings and loan?—A. They spoke about loans. They did not identify but I did make clear that I could not go into the outside.

Q. Was the First Continental and First Colony Savings and Loan involved?—A. It could have been but they did not mention names at all.

Q. They did tell you they represented Maryland lending institutions? Why did you bring it up in the first place before the Grand Jury that it was against the law for a Maryland Savings and Loan to lend outside the State—what is the relevancy of that to your testimony?—A. Well, I gave you the advantage of what information I had at the conference there.

[1226] Now, Congressman, was that your testimony before the Grand Jury?—A. Yes, it was.

Q. Is that true today?—A. It is true under our present Maryland law.

* * * * *

Mr. MARION. I wish to show through this line of questioning that Congressman Johnson knew prior to any Leisure City loan that it was against the law in the State of Maryland, or at least under the interpretation which he had of the State of Maryland, it was against the law and that, therefore, it is improbable that he would have given any advice to that loan transaction involving Leisure City Land Company.

By Mr. MARION:

Q. Is it not also a fact, Congressman, that the only transaction which you had any part in or took any personal part in which involved in any respect a loan from First Continental to Charles County was the payment of the $225,000 payment by Charles County Land Company to Desser and Garfield in July of 1961, out of moneys loaned by First Continental to Charles County Land Company?—A. I testified that I am fully familiar with that transaction.

Q. Is that the only transaction involving a loan between those associations, First Colony and First Continental, and Charles County Land Company about which you had personal knowledge?—A. I had thought that was the only one. It had been called to my attention that I had knowledge of others, but I do not have independent recollection.

Q. Of any others?—A. Because there was a tremendous amount of work going on and a tremendous number of conferences.

Q. And, is it not a fact that you never had all the details of that transaction in July of 1961?—A. I did not have as to the makeup of the $225,000 payments as to [1227] what it represented fully, in detail. The legal aspects I did.

Q. Is it not further a fact that you never participated as an attorney in any respect in the transfer of the title of the Charles County land to Charles County Land Company?—A. Not as to title. I did not prepare the deed. They gave me the deed to review. There were two deeds, one a fee simple and the other the warranty deed together with a number of other papers as contained in my letter of June 20, I believe it is.

Q. And, is it not a fact that you did not participate at all in that transfer of title to Charles County Land Company of

the land at Waldorf, Maryland?—A. May I get the exhibit that shows the letter of transmittal?

Q. You certainly may. I do not know which one it is.—A. It is either July 10 or July 20.

Q. You are referring to the letter of July 14.—A. 14th?

Mr. MARION. From Robinson to Congressman Johnson, defendant Johnson exhibit.

The WITNESS. I may have a copy.

By Mr. MARION:

Q. Is this the one you refer to?—A. Yes, in answer to your question I refer to the letter to me in which I received a check in the amount of $225,000 and with a number of conditions to be met before I released the money. And that involved the review of the warranty deed, the quit claim deed, together with other matters but I did not prepare the deed.

Q. Let me ask you, Congressman, if you testified as follows before the Montgomery County Grand Jury.—A. What page is that?

Q. Beginning on page 16, first of all at approximately the middle of the page.

> Q. In other words, whenever after the incorpora-
> [1228] tion of both of these corporations—

and I think they are referring to Charles County and Leisure City—

> it came to negotiations and dealings in regard to mortgages or sales or purchases of land, Mr. Kenneth Edlin would be the dominant figure in that he would be the one that would tell you or instruct you as to what he wanted.—A. Well, not as to the legal standpoint.
>
> Q. I am not talking about the legal standpoint. I am talking about dollars and cents, the negotiations.—A. Well, I never at any time discussed or had any dealing in to any loans through Mr. Edlin or his association in which he was connected. In other words, as to the Leisure City, as to the Southern Maryland Land Company, all of those negotiations with loans were not in my presence, nor did I hear except the $225,000.
>
> Q. And the $225,000, was that Mr. Edlin's, did he participate in that?—A. No, sir. That was the one that the letter was sent to me by Mr. Robinson which I read

which I would be happy to give you a copy, in which he delivered for Mr.—a law firm in Washington—to be delivered on the completion of certain items.

Is that your testimony?—A. It is. And, as I say, my attention has been called to the review of some others but I have no independent recollection of them.

Q. And did you also testify, beginning on page 32 of the Montgomery County Grand Jury transcript:

Question—beginning near the middle of the page, with reference to the persons you have previously named here in your cross examination as the officers of Leisure City Land Company:

Q. But you never dealt with those gentlemen at all?—A. No, I never dealt with them at all.

Q. You dealt with Mr. Edlin and Mr. Robinson?—A. Well, Mr. Robinson, yes.

[1229] Q. You keep saying Robinson. You dealt with Edlin, too, did you not?—A. In the essentials of negotiation, I was present, I heard conversation that he had with these groups who were interested in borrowing money and he was the one that did the talking.

Q. Robinson was not the one that did the talking when it came to negotiations and dealings to be entered into, is not that correct?—A. Well, as far as I know. But I say on the negotiations for loans, I was never present except at one.

Q. And did you know at that time, Congressman Johnson, that the money that was going to be lent would come from the First Continental Savings and Loan Association?—A. Only the one that I had personal knowledge, the one for $225,000, that is the only one that I have knowledge of.

Was that your testimony?—A. Yes, it was.

Q. And beginning on page 7, did you testify as follows, before the Montgomery County Grand Jury, near the bottom of page 7.

One negotiation we have in mind, sir, is the so-called mortgage. Evidence has shown it was not recorded, in the amount of $2,625,000 from Charles County Land Corporation to the First Continental Savings and Loan Association?—A. Yes, well, I did not participate nor

was I a part of that. There was a loan of two hundred twenty-five thousand dollars which I have knowledge of.

Q. Would you tell us about that one?—A. Yes, may I refer to my file.

Q. Surely.—A. Perhaps you are aware that with the failure of Desser and Garfield to get their funds that there was a foreclosure of the land in Maryland, and the day of the sale agreement was worked out with Desser and Garfield to sell their land to Charles County Land Company.

[1230] Q. Were you involved in that as an attorney?—A. I was involved only to the extent that I knew as to the sale but I did not have the details. The only thing that I had was that following the negotiations a letter was sent to me by Mr. Robinson under date of July 14.

Q. Of what year?—A. 1961. In which he stated that he was, that there was a check being turned over to me payable to Boykin and de Francis in the amount of $225,000, and to authorize to deliver this check to Boykin and de Francis subject to the following terms. There was received a warranty deed to the 97 acres which Desser and Garfield owned outright, quit claim deed to the 8800 acres remaining, assignment of notes of Ree,000 which had to do with the local newspaper, mutual releases by Charles County Land and its agents and Desser and Garfield, title opin from Local counsel to Mr. De Sales Mudd.

Q. Then who became the fee owner or title owner of that property?—A. Charles County Land.

Q. Did you participate in that as Attorney?—A. In what respect?

Q. In the transfer of the title.—A. No, that was—I do not know who handled the transfer of the title because I had no interest whatsoever in Charles County Land. I was not an officer. I was not a director nor shareholder whatsoever in it.

Q. Did you give any advice to Mr. Edlin, legal advice to Mr. Edlin or Mr. Robinson as a result of that foreclosure, that transaction at all?—A. The foreclosure was handled by an attorney in La Plata, a Mr. Carrico. Rudolph Carrico. He handled that.

Was that your testimony before the Montgomery County Grand Jury?—A. It was and I think when I said I did not know the details of the $225,000 that referred as to how that was made up, what that represented.

* * * * *

[1231] RECROSS EXAMINATION

By Mr. MARION:

Q. Congressman, you mentioned on redirect—telling the Federal Grand Jury or mentioning the sum of $25,000 before the Federal Grand Jury. Now, let me ask you, putting the sequence in its entire context, if this is your testimony?—A. What page is that?

Q. Page 70.

Q. It is my further understanding that at this time Congressman Boykin said that, if you were successful in bringing to him a prospective company or lender and putting together a deal, that he would see that you got a fee but that was not necessary because Mr. Robinson's interests were going to pay your fee, is that right?—A. No, I don't think that's right.

Q. Explain that then, because I'm a little mixed up on that.—A. In the general discussion they always said that, "You have to be paid for your trouble; that you are entitled to what we call a finder's fee."

I said, "I don't want any finder's fee. I only want legal fees for the work that I performed, and that was agreed upon."

Q. And the amount of your legal fees, and I am talking now only about the land transaction, the Charles County Land and Leisure City, the two tracts of land, was that to be based on the amount of money involved in the deal?—A. I don't know whether it was based on the amount involved. It was never set at all. We may have had discussions on it——

Q. Did they say, as in title settlements, a percentage of the amount involved in the final deal?—A. Personally, I had in mind, and I told them, that I felt I was entitled to a fee of $25,000. And that is what I have always felt that I was entitled to, but I did not receive it.

[1232] Q. But was it also if the transaction were successful, or if you were able to consummate it?—A. The feeling was that is would be successful, and I didn't think otherwise at the time. I would be happy to say at this juncture what fees I received.

Was that your testimony?—A. Yes, that is my testimony.

Q. It was later than that in the Federal Grand Jury testimony on page 88, was it not, Congressman, that you stated something that I read to you on cross examniation this morning, the statement that caused some concern which reads:

A. That, I don't know, because we haven't discussed a final, or even fees, in detail.

Now, that came after your reference to $25,000, did it not?—A. Yes. I never got my $25,000. In fact, I didn't get as much as I saved the land companies on the bond. But may I say in further explanation, Mr. Marion, that it was not all included for the foreclosure but I was to conduct the work for the Leisure City and the Charles County Land work in conjunction with that.

* * * * *

WILLIAM L. ROBINSON, a witness, having been previously sworn, resumed his testimony further as follows:

Mr. DOUB. I have just a few more questions, Your Honor, of Mr. Robinson.

DIRECT EXAMINATION (resumed)

By Mr. DOUB:

Q. Mr. Robinson, do you recall an airplane trip in July of 1960 from Washington to Miami with Mr. Edlin and Mr. Goldman?—A. Yes, sir.

[1233] Q. On that trip tell the jury whether you said at any time that you had written Mr. Johnson's speech?—A. No. That was not my statement at that time, no, sir. Nor at any other time.

Q. You say you did not make that statement on that plane trip?—A. I did not.

Q. Or at any other time?—A. That is correct, sir.

Q. Did Mr. Edlin make a statement that he had written the speech?—A. Yes, sir.

Q. Mr. Edlin said he had written it?—A. Yes, sir, he did.

Q. And what did you reply?—A. We had all had several drinks on that particular flight. Mr. Edlin was horsing around with several of his friends on the plane. He made this statement, and when he made it, I replied, "Mr. Edlin, you not only did not write that speech, you could not write a letter."

Q. In May or June of 1960 or at any other time, did you ever say to Sadie Goldman that "Mr. Johnson is on our payroll, it is costing Ken plenty", or did you ever use any comparable words?—A. No, sir.

Q. Now, there are in evidence, Mr. Robinson certain checks of First Continental Savings and Loan payable to Mr. Johnson which he deposited in his account at the Berlin Bank. Did you ever tell Mr. Edlin at any time in the presence of Mr. Jackson Rains, or not in his presence, that Mr. Johnson would not touch a First Continental check with a ten-foot pole, or words to that effect?—A. I have no recollection of any such statement. There was a period of time when First Continental was receiving a great deal of adverse publicity and anyone in any way associated with First Continental was being castigated in one way or another in the newspapers and it is remotely possible that during that period of time I might have made a comment something like that. I have no recollection of making it but there was a period of time when I do not [1234] think anyone wanted to be around First Continental when the Washington Post was working on it.

* * * * *

CROSS EXAMINATION

By Mr. WEINER:

Q. Mr. Robinson, before getting into the main stream of the matters about which you have testified on yesterday, there appears to be something in the transcript that you may want to clear up.

Yesterday His Honor asked you several questions with relation to your relationship with Charles County Land Company and Leisure City Land Company and also some questions with regard to the relationship that existed between the land companies, and the savings and loan associations.

* * * * *

Now, by that answer, Mr. Robinson, were you intending to convey the meaning or the impression that in these trans-

actions involving Charles County and Leisure City Land Company, you were merely an attorney for these companies and not a party to the transactions, or an officer of these companies?—A. I mean to convey by that statement that I did not have any proprietary interest in the transaction, that I didn't have an ownership interest in it.

Q. Ownership interest?—A. Yes.

Q. As a matter of fact, it is true, is it not, that you have even signed papers, including this copy of a sales contract dated the 29th day of April, 1961, for the sale of the Virigina land from Tensaw Land and Timber Company, Inc., to Leisure City Land Corporation as president of the Leisure City Land Corporation?—A. Yes, I did.

Q. That is your signature on that, is it not?—A. Yes, sir.

* * * * *

[1235] Q. As a matter of fact, Mr. Robinson, you were even an authorized signatory on the checks of the Charles County Land Company, were you not?—A. I am not sure whether I was or not. I very well may have been, sir.

Q. Let me show you what purports to be a check of the Charles County Land Company and I direct your attention to the first line of the two people signing that check and ask you if that refreshes your recollection as to whether or not you were an authorized signatory on the checks of Charles County Land Company?—A. It does not refresh my recollection but seeing my signature on here makes me absolutely certain that I was.

Q. Is it your testimony, as I understand it, that you were signing papers as President of one of the land companies and signing the checks of the other one of the land companies without ever knowing who the principals were that you represented?—A. That is correct.

* * * * *

By Mr. WEINER:

Q. Now, the last paragraph of the Court's question on page 4320:

> Now, you say you do not know; is that it? You do not know who really owned these companies?

Speaking of the land companies.

> Who the beneficial interest of these companies resided in.

The WITNESS. I told you exactly what I knew, Your Honor, that Mr. Edlin stated he was representing a group of investors from various cities and that they were the parties principal to Charles County and Leisure City. It was my impression that the same group that was referred to in Charles County was also being referred to in the Leisure City. I certainly knew that First Continental Mortgage Corporation was not owned by a syndicate or group but [1236] I was not acquainted with, nor was I advised, nor did I ever meet the members of this syndicate.

Now, do you recall that testimony?—A. Yes, sir, I do.

* * * * *

Q. Mr. Robinson, Let me ask you this question: Have you ever heard of a company known as Edlin, Goldman, Robinson, Inc.?—A. I have, sir.

Q. Was that a New York Corporation?—A. Yes.

Q. Was it in existence in August through December of 1961?—A. I am not that sure of the dates. It sounds like it is correct, sir.

Q. And the Robinson there in Edlin-Goldman-Robinson, was that you, sir?—A. It was, sir.

Q. And was this not a company operated in New York for the solicitation of savings and loan deposits?—A. That was the thing that its activities consisted mostly of. That was not its only purpose but that was primarily the only activity it ever engaged in.

Q. Those were the only activities it engaged in from August to December, 1961, is that right?—A. Not quite, sir. Very close to it. There were several attempts, several unsuccessful attempts to arrange through the sale of limited partnership arrangements which were fairly popular in New York at that time. Negotiations had been had on behalf of that corporation in that field but we never did succeed in their negotiations.

Q. And in this primary purpose that Edlin, Goldman and Robinson had of soliciting deposits, they were soliciting deposits, were they not, for First Continental and First Colony Savings and Loan Associations?—A. I do not remember whether they solicited for both or not, sir. I know they were soliciting accounts for First Continental and possibly for First Colony.

Mr. DOUB. Possibly what?

[1237] The WITNESS. Possibly for First Colony. I do not remember for certainty they did.

By Mr. WEINER:

Q. You do know they were soliciting accounts for First Continental?—A. Yes, I am sure of that.

* * * * *

[Government Exhibit 188–A through 188–K marked for identification.]

By Mr. WEINER:

Q. Mr. Robinson, I show you Government Exhibit 188–A through 188–K, for identification, and I ask you if it is not a fact that both the Leisure City Land Corporation and the Charles County Land Corporation between August and December of 1961, paid or advanced some $30,000 to Edlin, Goldman, Robinson, Inc.?

Mr. DOUB. What period is that?

Mr. WEINER. August through December.

Mr. DOUB. 1961?

Mr. WEINER. Yes.

The WITNESS. I did not actually total these but they appear to be in the approximate sum you mentioned in your question. I would say these sums of money were paid by Charles and Leisure to Edlin, Goldman and Robinson, yes, sir.

* * * * *

Q. Can you remember, Mr. Robinson, being called on the phone by two agents of the Miami FBI office on January 26 of 1962?—A. I recall that call. I am not certain it was January 26. It was in January.

Q. It was on a Friday that they called you?—A. I could not say that, sir.

Q. Pursuant to that call you made arrangements or the FBI agents made arrangements to come to your office and [1238] interview you the next day, right?—A. They made arrangements. Whether it was the next day or not, I do not know. Certainly it was within a very close proximity of the call.

Q. And after these arrangements were made, agents Strickland and Trettis came to your office, on a Saturday morning, did they not?—A. I remember the name Strickland. I presume you are correct in the other name. I do not have a complete memory of it. I do not remember the name.

Q. Mr. Strickland is a sort of short, middle-aged man?—A. I do not doubt it. I do not personally remember his name. I do not doubt you are correct.

Q. They came to your office at about 9:30 or 10 o'clock in the morning?—A. I think it was in the morning.

Q. And they advised you at that time, did they not, that they were conducting an investigation?—A. Yes, they advised me they were conducting a mail fraud investigation, in fact.

Q. Is that what they told you?—A. Yes.

Q. The FBI agents?—A. They did not volunteer it. I asked them, and that was their answer.

Q. They told you, though, that you did not have to make any statement to them, if you did not want to?—A. Yes.

Q. And that any statement you would make would be voluntary on your part?—A. Yes.

Q. After they had advised you that you did not have to make any statement, you talked with them for an hour or two, did you not?—A. On a question and answer basis.

Q. They made notes as they talked to you?—A. Yes, sir. They would ask a question and I would answer it and they would make notes of my answers.

Q. After this discussion with them at about 11:30 or so they left your office and said they were going to go over to [1239] their office, did they not, and have what you had told them typed up in a narrative form?—A. Yes.

Q. And about 3 o'clock that afternoon they came back to your office; is that right?—A. They came back. I do not remember whether it was the same day or not but they certainly—no substantial period of time passed.

Q. And they had a typed statement with them, did they not, in the narrative form, that was about 12 pages long?—A. Yes, sir.

Q. They told you then, or they gave you the original of that, did they not, at that time, to look at and they told you——A. Yes.

Q. Anything you wanted to change, if there was anything in there you did not like, you could charge it?—A. I think they did.

Q. And, as a matter of fact, you read through it, did you not?—A. Yes.

Q. You, in some places, made changes in ink?—A. I think there were one or two changes made in ink. I do not know how many.

Q. And some other places whole paragraphs were taken out and new pieces typed up in your office as a matter of fact, and added to the statement, was not that true?—A. That is possible. It may well be true.

Q. And after all this correctional process was done, you then signed the original of that, is that right?—A. I signed it, yes, sir.

Q. They gave you a copy of that statement for you to keep, is that right?—A. Yes, they did.

Q. Can you tell us when it was that you first gave it, gave either your copy or a copy made from your copy of that interview to Congressman Johnson?—A. In the preparation of this trial after the argument of motions, I would say.

[1240] Q. That was about when?—A. It seems like a year ago. I think it was about two months ago—something like that.

Q. And, did you give another copy of that to Mr. Doub?—A. No.

Q. That was Mr. Johnson's copy that he had?—A. Yes. No, that was a copy of Mr. Johnson's copy, I think.

Q. Do you have your copy with you?—A. I have a copy with me. I am not certain that it is correct with all of the corrections. It may be. I think it is but I am not certain.

Q. On page two of this statement the paragraph that begins at the top of it, it is as follows, is it not:

> I am acquainted with Congressman Thomas F. Johnson of Maryland. I can not recall the exact date that I met Congressman Johnson but I know that he made a speech in the United States House of Representatives defending the operations of the independent savings and loan associations of Maryland. I have been informed that this speech was made on June 30, 1960 and to the best of my recollection, I first met Congressman Johnson within two to six weeks after this speech. I am not positive but I believe I met him at his Congressional office at a scheduled meeting.
>
> I have been friendly with Congressman Johnson. I have been in his office on a number of occasions and have conferred with him quite frequently.

And that is the paragraph from the statement, is it not?—A. Yes.

Q. You read that before you signed the statement, did you not?—A. Yes, sir.

Q. Then on page 11 of the statement, the last paragraph which begins about the middle of that page:

> I am aware that Congressman Johnson did make a speech on the floor of the United States House of Representatives regarding savings and loan associa- [1241] tions in Maryland. However, I was not acquainted with Congressman Johnson at that time and I do not know who prepared the speech and do not believe the speech was prepared by Martin Heflin. I am acquainted with—

the word is "Marvin" there but I think that is a typographical error, I think you will agree.—A. Yes, sir.

Q. [Reading.]

> I am acquainted with Marvin Heflin and in the past have prepared memorandum to him concerning proposed speeches but I did not furnish him with any drafts concerning the speech made by Congressman Johnson.—As far as I know, no money was paid to Congressman Johnson by Mr. Edlin, First Continental Savings and Loan Association, First Colony Savings and Loan Association, or any officer of these institutions, and it is my opinion that, if such payment had been made, I would have known it.

And then on page 6—

* * * * *

By Mr. WEINER:

Q. I was just about to move to the payment section.

Now, if you will turn to page 6 of your statement, the last line, which begins as follows, does it not:

> I have examined my canceled checks and I have in my possession the original of the following checks which I drew against my personal accounts at the Industrial National Bank, Miami, Florida, payable to Thomas F. Johnson or Johnson & Johnson.

Thereafter, Mr. Robinson, you list a number of checks, do you not?—A. Yes, sir.

Q. And nowhere in that list do you include the check of June 20, 1960, do you?—A. Not only did I not include it, sir, I particularly stated that I had no knowledge about such a check.

[1242] Q. Yes, sir.

On page 9 of your statement you said this, did you not?

> Also I do not recall writing a check on my personal account on June 20, 1960 in the amount of $500 payable to Johnson and Johnson. To the best of my recollection I did not know Congressman Johnson.

Wait a minute there. There were some inked changes. The inked changed referred to the sentence before the one I read, did it not?—A. Yes.

Q. [Reading.]

> To the best of my recollection, I did not know Congressman Johnson at that time.

Now, that was your statement?—A. Yes.

Q. And that was in answer to the specific question by the agent whether or not you had drawn a check on June 20 payable to Mr. Johnson in the amount of $500?—A. It was, sir. And, further answering your question in that regard, Mr. Weiner, at the time of this interview, I had been advised by them that they wanted to talk to me about some checks in regard to Congressman Johnson and at that time I associated Congressman Johnson and my early meetings with him as having to do with Assateague and it was my recollection and belief at that time that those had taken place in July. I ordinarily remember things by events unless I have something else I can go by and I therefore had pulled all of my checks and asked my secretary to pull my checks and she says I told her to start with July. She pulled my checks from July on. When the agents were talking to me, I thought I had all the checks I had issued to Congressman Johnson.

We went over them. They specifically asked me about that specific check. I was absolutely certain I had met Congressman in July at the time; it was my best recollection then.

[1243] I insisted there was no such check. It was obvious they had been checking my bank account and I still did not believe there was such a check at that time. Subsequent to that I did locate the check.

In addition to that, I had told Congressman Johnson this—he insisted I was wrong and provided me with copies of letters I had written to him, long before June. It was on the basis of these letters that I am unable to ascertain when these Assateague Bay negotiations were which was when I met Congressman Johnson.

When I was talking without these things before me, just off the top of my head, to these agents, it was my recollection and very strong belief at that time that our first meeting had been in July.

Q. When they came to you first in the morning session, were you then not questioned about the June 20th check?—A. Oh, I am sure they questioned me about it.

Q. Because that was part of what they then went back and typed up?—A. Yes.

Q. Are you saying that, after being asked about this June 20 check in the morning session and after their leaving with the acknowledged purpose of going back to incorporate that into a written statement, you did not make any effort to look at your checks for the month of June to see whether you had written the check in June?—A. I was absolutely certain that they were wrong. I was positive they were wrong.

* * * * *

Q. Now, Mr. Robinson, I believe you also testified, and correct me if I am wrong, that because of the way that you were impressed with Congressman Johnson in these Assateague Bridge negotiations, you went to see Congressman Johnson sometime in August, on August 20 and talked to him about representing you or your company.—A. I think that is probably a fair interpretation of what I have said. I do not think that is exactly the way I said that.

* * * * *

[1244] Q. Now, that check is August 30. There was a settlement—was there not, of the Engineering and Development Corporation loan on September 9 of 1960?—A. It was certainly very early in September. My best recollection is it is the 9th. In fact, if you asked me, I would have guessed it was the 6th. The 9th might be correct.

Q. The settlement took place, did it not, in Upper Marlboro in Prince Georges County?—A. It did, sir.

Q. This was a three party transaction, was it not?—A. Yes, it was.

Q. There was a sale of land so there was the seller and the purchaser and First Continental Savings and Loan Association as the lender to the purchaser?—A. That is correct, sir.

Q. And the seller was a company by the name of Hopkins and Wayson, Inc.?—A. Yes, sir.

Q. They were represented by Mr. Lansdale Sasscer and Mr. Buscher, were they not?—A. I remember very well, Mr. Sasscer.

Q. And at the settlement the buyer which was Engineering and Development Corporation was represented by Mr. Daniel Singer, was it not?—A. I do not remember Mr. Singer, whether he was present or not. I think he was their attorney but I am not sure he was at the settlement. He may have been.

Q. You do not think he was at the settlement.—A. I do not think he was but I could be wrong.

Q. At that settlement on behalf of First Continental Savings and Loan Association, were you and Mr. Paul Berman—— A. Yes.

Q. Representing First Continental?—A. Yes.

Q. Mr. Paul Berman is a Baltimore, Maryland lawyer?—A. Yes.

Q. And at that settlement the First $95,000 of this loan [1245] was disbursed, was it not, to go to Hopkins and Wayson, Inc.?—A. I think that is correct, sir.

Q. And a check had been issued the day before the settlement from First Continental, had it not, to Mr. Berman so that Mr. Berman could then issue his own check to pay the first $95,000 of the loan proceeds out of the settlement?—A. I think that is correct, sir.

Q. And it is your testimony, is it not that Congressman Johnson reviewed none of these loan papers between August 20 when you first saw him, and September 9 or the 8th or the 6th, as you seem to recall, the day of settlement?—A. That was not quite my testimony, Mr. Weiner. My testimony on direct, if I remember correctly, was that during my conference with Mr. Johnson, I discussed with him the Engineering and Development Loan which was then being prepared and with the counsel that had been representing me up until that time. That I discussed that with him to some extent to familiarize him and to give him an idea during that conference of the

type of work and so forth that we did. I believe that was my direct testimony and at that point Mr. Doub interjected a question I think that took me off of the subject.

We did not complete the discussions of that. At that time, Mr. Johnson, when I told him about our procedure of loan agreements and mortgages, and so on, he asked me if we recorded our loan agreements.

I told him no, we did not but I always referred to them in the mortgage and I thought that would be sufficient notice. That it was against our policy to record loan agreements because they set forth so much of our business principles and activities that we felt that we did not want to put them of record and just tell everybody who we were conducting our business with. We did not think it was good policy. He did recommend to me at that time that he felt that I ought to record them and if I felt that my loan agreements contained materials which I did not want to record, that I would do well to revise my loan agreement or incorporate it within the terms of [1246] the mortgage. But this was not legal advice I had sought. This was just a general discussion that we had and I completed these arrangements with Mr. Berman and I do not believe there was anything on my direct that would indicate anything to the contrary.

Q. And when you completed these negotiations with Mr. Berman after this alleged conversation with Congressman Johnson, you did not say one word to Mr. Berman, did you, that Congressman Johnson had made that sort of a suggestion to you?—A. No, sir, I had no intention. I knew my client would never allow me to record one of these construction loan agreements. One had been recorded upon one time and that was the one and only time it was ever done and it was done without the client's knowledge and there was no reason to do it.

Mr. Johnson made a recommendation. He did not say what I was doing was illegal. He thought it was a bad practice, that something else ought to be done. That we ought to revise our loan agreements but this was not telling me that what I was doing was illegal. No, I did not discuss it with Mr. Berman. I did not believe there was any reason why I should, sir.

Q. The mortgage which was put on did not contain that suggestion, that alleged suggestion?—A. No, sir. As a matter of fact, that mortgage was improperly drawn and corrected for me by Mr. Lansdale Sasscer at that meeting.

Q. At the settlement?—A. Yes, sir.

Q. What was wrong with that mortgage that had to be corrected at the settlement?—A. There was no affidavit of consideration on it and it had been approved by my Maryland counsel and Mr. Sasscer took me aside and told me it was incorrect.

Q. He advised you that the mortgage was not any good?—A. We put one on it at that time.

Q. You knew as of the day of that settlement, did you not, back in September of 1960 that there was a re-[1247]quirement for affidavits of consideration on Maryland mortgages?—A. I did, sir.

Q. Were you not shocked or surprised that you did not have it, this affidavit of consideration on your printed form for the Cassell Mortgages?—A. I did not realize it was not on the printed form, sir. This was a typed mortgage that I had typed up that we had at the Sasscer meeting.

Q. And you never went back and looked at any of your other mortgages after hearing that the one you had here was no good for an affidavit of consideration?—A. I corrected five mortgages thereafter that were typed mortgages that were renegotiated and actually had not had them. I saw that they had them. After that I never checked the printed mortgages. I was satisfied they were all right.

Q. You mean after looking at this one and finding it was bad and after correcting five other typewritten ones and finding they were bad, your testimony is you made no effort to look at any of your printed mortgages to see if they were all right?—A. No, sir, the printed mortgages had been prepared from a Maryland form. I was not in the least bit concerned with it.

* * * * *

Q. In your FBI statement, Mr. Robinson, you had a paragraph, did you not, with respect to this Engineering and Development Corporation loan?

* * * * *

Q. This is the paragraph, is it not:

> In connection with my duties with the First Continental Savings and Loan Association, I have consulted Congressman Johnson on a number of occasions concerning legal matters. There was a loan to Alfred Kastner

involving approximately $800,000 and I prepared the necessary mortgages and other documents to be filed in the State of Maryland and I was informed that certain phases of these papers did [1248] not comply with the laws of the State of Maryland and I, personally, requested Congressman Johnson to review all of the papers and documents. Congressman Johnson later advised that a portion of the papers were not prepared in accordance with the laws of the State of Maryland and he assisted in preparing the papers in correct order. And also reviewed all of the details concerning the agreements in connection with the loan.

That was your statement, was it not?—A. That was my statement then, yes, sir.

Once again, as you know, Mr. Weiner, this was an interview involving activities that covered several periods of years on a question and answer basis and as far as this is concerned, I think I have testified to the number of times we discussed this with Mr. Johnson or that I did with Mr. Johnson and it was my best recollection at this time that some of those papers had been written over.

I may have in my mind very possibly confused it with some of the Cassell papers but that was my best recollection at this time.

Q. You say it was your best recollection when the FBI interviewed you back in 1962 that they had been?—A. Yes.

Q. As a matter of fact, it was also your best recollection at that time, was it not, that the $1,000 which had been paid to Congressman Johnson on August 30 had been for reviewing these papers and the Cassell transaction and not as a retainer?—A. I doubt if that is a fair statement. I think that was probably the result of the wording of the question that was an answer to. Certainly the $1,000 as a retainer and I believe I testified on direct that after he had received this retainer, he did various items of work during the year 1960 and we ultimately treated that as payment for those jobs. That is true. But I certainly do not believe I ever said I agreed to pay him $1,000 for doing these specific items and I do not believe that I said that here.

[1249] Q. Now, when was the last time you read through this statement?—A. Oh, about two days ago.

Q. Can you tell us whether there is any mention in there of the check of August 30 as a down payment on a retainer?

* * * * *

Mr. WEINER. I will read it over to him.

I have examined my canceled checks and I have in my possession the original of the following checks which I drew against my personal account at the Industrial National Bank, Miami, Florida, payable to Thomas F. Johnson or Johnson and Johnson.

Check No. 609 dated August 30, 1960 in the amount of $1,000 payable to Thomas F. Johnson. This check was for legal fees in connection with the mortgage and correction of papers concerning the Alfred Kastner and—and think I think "Incorporated" is added—and Cassell loans.

A. Yes, sir.

Mr. Weiner, as I say, this was based on a question-and-answer proposition and they wanted to have me relate these checks to services and to the best of my ability, I did so. They would not ask me what our financial relationships were and how they were established. They wanted to know what legal services I would relate to the $1,000 check and so forth. Now, this was a retainer in August. It was not set for any work in particular. As it turned out, we had testimony and when I give it a lot more thought, there are other items now that are not mentioned in here.

As you know, this was roughly about a two hour interview. It was without referring to any other documents, giving my memory right off the top my head, the best I could, to be cooperative but it was based on answering questions.

This was not a voluntary statement of facts. It was in [1250] answer to particular questions and the best recollection I had of the facts in reply to a specific question.

Q. As a matter of fact, you even corrected that paragraph and added in ink when brought back, the phrase "and Cassell Loan," did you not?—A. Yes, sir.

Q. And it is true, is it not, that the Cassell loan was not referred to Congressman Johnson for his examination until February 3 of 1961?—A. That is correct, sir.

I know that because I have in my possession or I have since this interview seen the letter of February 3, giving the exact time when it happened.

Q. Then the next check, is it not, the first of the series of the $800 checks?—A. Yes.

Q. It begins Check No. 1419 dated January 7, 1961, in the amount of $800, payable to Johnson and Johnson, was a continuation of the payment for legal fees in connection with the Kastner and Cassell Loans?—A. Yes.

Q. And then the next paragraph:

> Also check No. 673 dated February 2, 1961, in the amount of $800, check dated March 6, 1961 in the amount of $800 and check dated March 31, 1961 in the amount of $800. All payable to Johnson & Johnson were in connection with the work on the Alfred Kastner and Cassell transactions.—A. Yes, and I would say that this statement is correct. It is incomplete but there, in so far as it went, it is correct. These things were all deemed to be prepaid for by these sums. There were other services provided during this period of time which also were included within the $800.
>
> But the services he provided in January, February and March and so forth, they were all charged against his retainer and his retainer was deemed as his payment for those. He got no additional fees.

* * * * *

[1251] Q. Now, you also testified, did you not, about a mechanic's lien problem which Mr. Cassell had because of a mechanic's lien which had been filed by a road builder against Cassell properties, is that correct?—A. Yes.

Q. I believe your testimony was this fellow had walked off the job and claimed the $20,000 was due to him?—A. I do not know whether I used the word "walked off the job" or not. He had not completed his work. I do not remember now whether he walked off or just could not continue financially, or what.

The COURT. I gather there were claims both ways from what the witness has said and as I recall his testimony, it was something to the effect that the man claimed Cassell owed him $20,000 and Cassell claimed he had not performed and they were each I suppose, complaining. I do not think the word was used. Each claimed the other breached the contract. I gather that was the effect of his testimony.

Mr. WEINER. Yes.

By Mr. WEINER:

Q. And this mechanic's lien was causing some problem and that you and Mr. Edlin discussed it with Congressman Johnson. Is that right?—A. Yes, sir.

Q. Your testimony I believe on page 4224 was as follows:

> He suggested a settlement figure that he felt would be no more than it would cost to fight the case.
>
> I relayed that information to Mr. Cassell. He, in turn through his counsel, negotiated the matter and the claim was settled within the figure suggested by Mr. Johnson.

Was it your testimony that you relayed this to Mr. Cassell as a suggestion by Congressman Johnson?—A. I cannot tell you whether I mentioned Congressman [1252] Johnson to Mr. Cassell or not. I, frankly, do not remember. I am certain that I went to Mr. Cassell and told him that we had reached this decision. Now, whether I told him that Congressman Johnson and I and Mr. Edlin had reached the decision or whether I merely told him this was the decision but he was going to be bound by whatever decision we made because, in order to make any payment of any kind he was going to have to get it from us so he had to do what we wanted done in the matter.

Q. Isn't it true you never mentioned Congressman Johnson's name to Mr. Cassell as being an attorney for First Colony or First Continental?—A. Oh, I do not know whether I did or not, sir. I will be somewhat surprised if you say I never did. Do you mean at this particular meeting, or at any time, sir?

Q. Through 1961.—A. I doubt if that is very probable. I am almost certain that at some time along the line in talking with Mr. Cassell, I probably mentioned it.

Q. Do you know when and where that could have been?—A. No, sir, I feel like I saw Mr. Cassell enough times to where it seems unlikely to me I would not have mentioned it to him somewhere along the line.

Q. You never mentioned the name "Congressman Johnson" to Mr. Perry Bowen, who was representing Mr. Humphreys, either, did you?—A. I am not going to say I did not.

The COURT. The question should not be also, "neither," or anything like that. Ask the question without assuming a construction of the previous answer.

Mr. WEINER. Yes, sir.

The WITNESS. I am not even positive I even met with Mr. Perry Bowen at that time. I have been introduced to Mr. Perry Bowen. I may or may not have talked to him in regard to this matter. I have no recollection that I discussed this with Mr. Bowen at all. If not, the only time it would have been that I met Mr. Bowen would have [1253] been at a social function or just merely being introduced to him. At the most I do not think I ever saw that man more than three times in my life.

By Mr. WEINER:

Q. You testified that after all this had been taken care of and after you had some discussions as to whether you could put a second mortgage on where you held the first and continue to advertise in accordance with your policy, that you asked Congressman Johnson for a written opinion on this, is that right?—A. I asked him for a letter. I asked him for a letter.

Q. And that he prepared such a letter?—A. Yes, sir.

Q. You do not have it?—A. No, I would not have it. It would be at one of the associations. It would probably be at First Continental.

Q. Did you ever ask him, Congressman Johnson, for his office copy of this alleged letter?—A. Yes, I have and I am sure he looked for it and was unable to find it.

Q. Do you have a producible copy—that is, a copy that you can produce here in Court of any legal opinion or legal memorandum by Congressman Johnson written in the years 1960 and 1961?—A. No, I do not think he wrote very many opinions. If there were any that he had written I believe they would be at First Continental in all probability or First Colony.

That is where most of my records and papers are. The only one I particularly remember was this because I specifically wanted the letter for my protection when—for advertising purposes and it was a specific request of mine.

It was not a lengthy letter and my best recollection would be it was a one-page letter, but I would not want to swear to that. It could have been two.

* * * * *

[1254] Q. Mr. Robinson, you testified yesterday, did you not, about an agreement or meeting that you said took place on May 2 of 1961, at which time you and Mr. Edlin met with

Mr. Johnson and reached an agreement that Mr. Johnson would be paid $25,000 for the foreclosure and the followup on both Charles County and Leisure City Land Company, is that correct?—A. That is correct, except for the fact I do not believe that I said on May 2. I do not believe I was that certain of the date. I would be willing to concede it could have been May 2nd but I do not believe I said it was.

Q. This is the same meeting that Congressman Johnson referred to as being on May 2?—A. Yes, sir, I am not that certain of the date.

Q. I believe that Congressman Johnson testified with respect to certain payments on that agreed retainer having been made to him and that he had discussions with you with respect to these various checks which were paid to him as payments on that retainer.

Do you recall his testifying to that?—A. I recall that he testified in that area. I do not recall what his testimony was in that regard, no, sir.

I think I would like to see that if you are going to ask me about it.

Q. Do you recall on page 3967 of the transcript he was asked:

> How did you make known that you wished to receive the check dated May 25, 1960?

* * * * *

Q. It is on page 3957. It begins on the 7th line.—A. All right, sir.

Q. The question was: It was with respect to the check of May 25, and before that the question was:

> How would it be determined just when you would receive the subsequent checks after that meeting?

[1255] And the answer was:

> It could not be determined. I had to request or make known that it was due.

And then came the question:

> How did you make known that you wished to receive the check dated May 25, 1962, and to whom did you speak if you spoke to anyone.

And the answer was:

> Well, during the time certainly I was in touch with Mr. Robinson and no doubt I mentioned it to him.

Now, what I wanted to ask you is whether it is your recollection that you talked to Congressman Johnson and he made known to you that he wanted that check which was delivered to him on May 25, 1961?—A. I have no independent recollection of it, sir. It is possible. I do not think that it happened on very many occasions. There may have been one or two times when he told him—when told me "I think I am entitled to some more of my fee." That may have happened on one or two occasions. I certainly would not try to tie it to any particular check. I do not think it is possible to do that.

Q. Then there were some questions asked, Congressman Johnson, about these two First Colony checks which totaled $4,000, on May 23 and May 25, and the check which he said, the $4,000 check which he said was in substitution of them. Now, I think if you will look at page 3958, the second line was "To whom did you return them," referring to the two First Colony checks.

> I returned them to Mr. Edlin. I am not sure.
>
> Q. And to whom did you make a request that a First Continental Check in the sum of $4,000 be issued to you in substitution for the two earlier First Colony checks.—A. To both Mr. Robinson and Mr. Edlin.
>
> [1256] Q. Do you recall where that conversation took place?—A. In my office.
>
> Q. In Washington?—A. Yes.

Do you recall having a conversation with Congressman Johnson about the substitution of the First Continental check in the amount of $4,000 for the two First Colony checks?—A. I do not recall such a conversation, sir. It could very well have occurred. I certainly have no recollection of it at this time.

Q. When the FBI came and interviewed you, Mr. Robinson, they asked you about the two First Colony checks, on page 8, I believe, the two First Colony checks that had been issued to Congressman Johnson and they asked you about the various First Continental checks that had been issued to him, did they not?—A. They did, sir.

Q. And was this not your statement, beginning on the last full paragraph or the last paragraph beginning on page 8:

> I can not recall seeing any checks payable to Johnson & Johnson but the First Colony Savings and Loan Association on May 2, 1961 in the amount of $1,500 and the check of May 25 in the amount of $2,500. These payments could be disbursements under loans for legal services.
>
> Also, I have no knowledge concerning a check dated June 28, 1961 in the amount of $3,250 by the First Continental Savings and Loan Association payable to Johnson & Johnson, although this could be a disbursement of loan proceeds on a loan to the Leisure City Land Corporation for legal fees.
>
> Also, I have no full knowledge of a check dated May 2, 1961 in the amount of $3,500 payable to Johnson & Johnson, check dated May 25, 1961 in the amount of $2,500.
>
> [1257] And check dated June 7, 1961 in the amount of $4,000 payable to Johnson & Johnson. I am not aware of the reasons why these checks were made payable to Johnson & Johnson.

And then there is added in ink?

> But I believe they would be fees, either for legal services for Charles or Leisure City.

That was your statement at that time?—A. That was my statement and I would not be inclined to change it at this time. I think this: The only thing that is possibly confusing in that, Mr. Weiner, would be this: In regard to that change. I believe that the original question had been "Why would the checks be made payable to Johnson & Johnson," and I presume there is a preference but I did not have any particular reason or really know. I think the other was added on because we decided it was not clear the way it was said that I did not know why they were paid at all.

I have no recollection at this date that I, personally saw any one of these particular checks.

I cannot deny that I saw them. I cannot actually deny that I may have conceivably delivered one of them for all I know. I have no independent recollection of it.

I do know, and I have said in each instance here that they would be charged to the legal services. But I have to this

day—I have not examined the books of First Continental and we were trying, particularly throughout this thing, they particularly asked me to stick with what I could say was my absolute personal knowledge. They tried to avoid as much as possible understandings and beliefs and they also wanted me to say if I could, that I did not have the actual knowledge.

There were several occasions when they did not want my understanding. If I did not have actual personal knowledge, "they said we do not want anything else there."

[1258] This question and answer the way this was done, we tried to be very careful and there are a lot of things here where I had understood, and I had beliefs and they did not want that unless I could say I saw the check delivered and when it was delivered.

I was told that it was for this particular purpose. This was the way the examination was handled and that is why we get this in this shape.

Q. And when this examination first turned to the question of legal fees, didn't they ask you what you thought was the total amount of legal fees received by Congressman Johnson from all of these companies?—A. I think they probably did.

Q. And didn't you tell them, orally when the question was first asked of you, that you thought that the total amount that he received of all his legal fees for all his services was somewhere between $6,000 and $7,500?—A. I do not remember saying that.

Q. If Agent Strickland were to come here and say that you told him that on that day, would you deny telling him that?—A. I would say I would think he would be mistaken.

Q. I would like to ask you a question or two about another subject.

* * * * *

Thereupon, WILLIAM LEE ROBINSON resumed the stand and testified further as follows:

CROSS EXAMINATION (continued)

By Mr. WEINER:

Q. Mr. Robinson, in the course of the break we had did you have occasion to look at your statement again?—A. No, I haven't looked at it during the break.

[1259] Q. If you need to look at it, look at it. If you can't answer this question without looking at it, but isn't it true that this statement contains no reference to any alleged agreement that Congressman Johnson would get $25,000 for his work after May 2, 1961?—A. There is no mention, and there was no reason for any mention. What the gentlemen interviewing me asked me to do was in regard to actual payments which had been made. They asked me to describe the services which I could relate and what in my mind I related those payments to. This was the question I answered, and the answer, I believe, was responsive to that question. This was not a narrative, sir.

Q. There is in evidence—correct me if I am wrong—to my recollection, checks from First Continental Savings and Loan Association, which are Government's Exhibits 12, 13, 14, and 15, which total $13,250.—A. All right, sir.

Q. Plus two checks from you, drawn on your account, which are Government's Exhibits 67 and 83, which total $3,500.—A. All right, sir.

Q. Which comes to $16,750, is that right?—A. I presume your addition is correct. I haven't added them.

Q. Now, those were all the checks, were they not, paid to Congressman Johnson for his alleged work on these land deals from May 2nd up to the day on which the travelers' checks were discussed?—A. To the best of my knowledge that is correct, Mr. Weiner. I presume if there were others you would have had them here, but I wouldn't necessarily know of every check issued, depending on the evidence in this case.

Q. And the travelers' checks totaled $3,000?—A. That is correct, sir.

Q. And I believe that you testified that that was discussed with Congressman Johnson as the final fee, is that right?—A. That is correct. It was my understanding that that was to be his final payment, and I presume you would say that was the final fee, yes.

[1260] Q. Now, at the time when $3,000 would only total $19,750, was there any discussion as to whether, or any discussion about this being more than $5,000 less than this agreed retainer had been?—A. There was not discussion in my presence in that area. I was not present at the discussion where the $3,000 figure was arrived at. I did not participate in that discussion.

Q. You had nothing to do with that?—A. With the negotiations that established the $3,000 as the final payment, no, sir.

Q. Who did Congressman Johnson discuss that $3,000 with?—A. Sir, I wasn't present at the discussion. I can make a very educated guess, but I do not know, sir. I was not there.

Q. How did you know then that the $3,000 was to be the final fee?—In my conversation with Mr. Johnson he told me that his final payment was to be $3,000. I understood from Congressman Johnson that the figure was that. How he arrived at that figure, I do not know.

Q. Did you ask him how much he had gotten on his $25,000?—A. No, sir.

Q. Did he tell you how much he had gotten on his $25,000?—A. No, sir.

Q. Did you ask Mr. Edlin about this?—A. No, sir.

Q. Now, you and Mr. Edlin went to Congressman Johnson's office late in the afternoon of October 23rd, is that correct?—A. I think that is correct, sir.

Q. And after you were with him at the office, you all then went over to the Woodner Hotel, is that right?—A. Yes, sir.

Q. And that is later when Mr. Rains arrived with the travelers' checks?—A. Yes, sir.

Q. And Mr. Edlin and Mr. Johnson went over to another table?—A. Yes, sir.

[1261] Q. As a matter of fact, I believe you even told the FBI that although you understood they were paid to him, you didn't see them given to him?—A. I have no independent recollection of seeing them handed to him, no, sir.

Q. Now, the transaction was this, was it not: The 65 travelers' checks were given to Congressman Johnson to negotiate with whoever he was going to negotiate, and then Mr. Rains prepared a $3,000 check of First Continental Savings and Loan Association, which was sent down to Dallas, Texas, to the Republic National Bank, to pay for the travelers' checks?—A. I would presume he did so.

Q. And that check was drawn on October 23, 1961?—A. Now, I presume you are stating it correctly. I have no actual knowledge of it, sir.

Q. And on that same day, October 23rd, or that evening, you wrote a check for $3,000 on one of your accounts in Miami, and you made that payable to First Continental Savings and

Loan Association?—A. I believe Mr. Doub has that check if you would like it, Mr. Weiner. It might be more legible than this.

* * * * *

By Mr. WEINER:

Q. I have shown you the copy of the docket entries of that case, which are in evidence. Look at them and if that docket shows, does it not, that the arraignment was held on November 17, 1961?—A. Yes, sir, it does.

Q. That was the day on which the not guilty plea was entered?—A. It so shows.

Q. And the trial date was approaching, was it not?—A. I am sure it was.

Q. The proposed trial date?—A. I don't remember what the trial date was.

Q. And Congressman Johnson at that time was on his world tour, is that right? He was in Europe?—A. I believe he was. He left in October, I believe.

[1262] Q. October 23rd.—A. I don't remember his return date, but I am presuming from your question it must have been after November 17th.

Q. And the next day, November 18th, you and Mr. Edlin flew down to Mobile, Alabama, didn't you?—A. I have been to Mobile, Alabama. I don't know if it was on that particular day. If you say so, I presume you have checked the note.

Q. Do you recall going down there?—A. I recall flying to Mobile, Alabama.

Q. After the arraignment and before the trial?—A. It could have been before or after, either one. I don't know. Mr. Weiner, I can't remember these things by a specific date.

Q. When you went down there you said you and Mr. Edlin stayed at the Admiral Semmes Hotel in Mobile, Alabama, did you not?—A. Yes, we did.

Q. And that is the same place where Congressman Boykin has his office in Mobile, Alabama, isn't it?—A. Yes, it is.

Q. And you saw Congressman Boykin at that time?—A. He wasn't at the hotel at that time.

Q. But you and Mr. Edlin got in touch with him, didn't you?—A. Yes, sir.

Q. About the case, wasn't it?—A. No, sir.

Q. It was not?—A. No, sir.

Q. You left there on a Sunday, did you not?—A. We weren't there more than two days. I don't know whether it was a Sunday or Tuesday or Monday. You have got the exact dates. I am sure it can be established, but I can't tell you it was on a Sunday, no, sir.

Q. And didn't Congressman Boykin advise you that on the following Tuesday he called Mr. Miller from Mobile, Alabama, to discuss the impending trial?

[1263] Mr. WILLIAMS. Didn't he advise him when, sir?

By Mr. WEINER:

Q. Didn't he advise you shortly after he had done it; that he on the Tuesday after you had been down to Mobile, Alabama, had called Mr. Miller about the impending trial?—A. I understand there was such a call. I do not remember discussing that call with Mr. Boykin or him reporting to me that he made a call to Mr. Miller, no, sir. I understand the evidence is that he did so. Did you want the purpose of our trip to Mobile?

* * * * *

A. Mr. Weiner, I don't believe that was your question, or if that was my answer, I will retract to this degree: I am not satisfied that at no time—I wouldn't state here under oath that at no time during my conference with Mr. Boykin that I never made any mention of the case.

If, as you say, this was the day after arraignment, I would say it is very probable that during this conference I said something about, we were at the arraignment yesterday, or the day before, or whatever it was. This is presuming you are correct that this trip was immediately after the arraignment. That was not the purpose of the trip. It would not have been the subject matter of our conferences, but to say it wasn't even mentioned, I wouldn't go that far, sir.

Q. Now, on the very last paragraph of your statement to the FBI of January 27, 1962, there was this statement, was there not:

> I wish to state that at no time have I had any conferences with the Attorney General of the United States or Assistant Attorney General Herbert J. Miller in the presence of Congressman Johnson or Congressman Boykin, nor to my actual knowledge—

and the word "actual" is added in ink, is it not?—A. That is right.

[1264] Q. "* * * have Congressman Johnson or Congressman Boykin contacted the Attorney General or any members of his staff on behalf of Mr. Edlin."—A. Yes, sir.

Q. Now, can you tell us whether or not you were present when Mr. Meyer, at either end of the phone conversion, when Mr. Meyer had his first telephone conversion with Mr. Boykin?—A. I was not on the telephone. I was present in the room, yes, sir.

Q. And in which room were you? Where were you at the time?—A. At the time of that particular conversation, my best recollection is that we were in Congressman Boykin's inner office. He was sitting at his desk and I was sitting in the room.

Q. You were there?—A. Yes, sir.

Q. Mr. Edlin was there?—A. Yes, sir.

Q. Congressman Boykin was there?—A. Yes, sir.

Q. And Congressman Johnson was there?—A. That is correct, sir.

Q. Do you recall hearing Congressman Boykin talking to whoever was on the other end of that line?—A. I do remember that he talked on the line at one time, yes, sir.

Q. And after that call was finished did Congressman Boykin advise you that Mr. Meyer was coming down to Washington?—A. No, sir.

Q. He did not?—A. No, sir.

Q. Did he tell you that Mr. Meyer wasn't coming to Washington?—A. No, sir. I don't think it was known at that time whether he was or not.

Q. What did you hear Congressman Boykin saying to Mr. Meyer or whoever was on the other end of that telephone conversation?—A. Let we cover that meeting a little bit, and I will try if I can pin this down to a particular person. The call was initially placed by Mr. Edlin.

[1265] Q. Where was it initially placed?—A. From Congressman Boykin's office, charging the call at that time to his credit card. Mr. Meyer was not available, or at least they couldn't seem to be able to get him to the phone at that particular moment. The message was left for him to call back Congressman Boykin's office, which he did.

It is my best recollection that when that call from Chicago came in, it was first given to Mr. Edlin and my recollection

is he talked to Mr. Meyer for a few minutes, explained to him that there was a report in the Department of Justice that erroneously charged him with several convictions of a crime during a period of time when Mr. Meyer had had him under his supervision, or during a period of time when Mr. Meyer had made a lengthy and careful investigation of Mr. Edlin, and that he wanted it known that that wasn't true, and it was very important to him that that be known; that this was not a true statement.

He then stopped and listened a few minutes to Mr. Meyer. He said, "I have Congressman Boykin here, and I want you to tell him the same thing," and he handed Congressman Boykin the phone.

Congressman Boykin listened for a few minutes. He didn't speak immediately, I don't believe. He listened for a few minutes, and he had some sort of conversation, and I am not sure exactly what it was, and I am not going to be able to say that it was Mr. Boykin or Mr. Edlin; one of the two asked Mr. Meyer if he could come to Washington. It is my understanding that his answer was that he didn't know whether he could or not. I didn't hear the conversation.

Q. Before you go further, you say now that it was either Mr. Edlin or Congressman Boykin who asked if Mr. Meyer could come down?—A. That is correct. I do not know which one it was. They both talked on the phone. I know he was asked, and I am certain that he did not know whether he could come or not, because Mr. Edlin and [1266] I went to Chicago in order to get him to come to Washington and find out what would keep him from coming.

Q. So then right after this conversation you and Mr. Edlin together went to Chicago?—A. Yes, sir.

Q. You flew there?—A. Yes, sir.

Q. And when you got there you checked into a hotel?—A. Yes, sir.

Q. And from that hotel Mr. Edlin called Mr. Meyer.—A. I am not certain of that, sir. He was contacted. I am not certain whether we called or went to his office. I have seen Mr. Meyer approximately three times. I know on one occasion he was called from the hotel and on one occasion we went directly to his office, and I think the other time he was contacted by phone, and I can't remember which time was which.

Q. In any event, later that evening when Mr. Meyer was

already in the hotel room with Mr. Edlin you came into the hotel room, is that right?—A. If I wasn't there when he arrived, I certainly came in while he was there. I am not certain that he was with Mr. Edlin without me. He may have been.

Q. And you were all together?—A. Yes.

Q. And at that time when you were all together that evening a telephone call was either made to or was received from Congressman Johnson, isn't that true?—A. I think that is correct, yes.

Q. Now, was Congressman Johnson called or did Congressman Johnson call Mr. Edlin?—A. I am reasonably certain that if such a call were made that it was made to Mr. Johnson. I don't believe that he would have called. I am basing that on Mr. Meyer's testimony here in the courtroom. I do not remember the incident, but it wouldn't surprise me at all. I may very well.

I am certain that evening that the status was Mr. Meyer agreed he would go to Washington. I wouldn't be sur-[1267] prised if I called Congressman Johnson and told him so. I don't have any independent recollection of doing it. In view of Mr. Meyer's testimony I am sure I did, sir. I am sure he didn't call me.

Q. Do you remember putting Mr. Meyer on the phone so that he could talk with Congressman Johnson?—A. Mr. Weiner, I don't remember making the call. I am satisfied that I did, but I do not remember the incident, sir, and I certainly don't remember putting Mr. Meyer on the call, and I don't remember making it.

Q. Do you remember meeting Mr. Meyer when he came to Washington?—A. Yes, sir.

Q. Did you get the train ticket for him to come?—A. I believe I testified on direct, and it is my best recollection that it was charged to a personal credit card of Mr. Edlin's. He had a railroad credit card, and I believe it was purchased with that card.

Q. Did you purchase it?—A. I don't think so, but I am not sure. I doubt if I could have used that particular card. I am sure it was a personal card made out to Mr. Edlin, and I believe I was probably with him when he purchased it. That is another incident that I don't particularly remember. I have a recollection that that was charged to Mr. Edlin's credit card, but I don't remember having an actual memory of walking

into the railroad station and being there when that ticket was bought, but I do have it in my mind, a strong recollection that it was charged to his railway credit card.

Q. Then you picked him up at the train station when he arrived in Washington, and you took him over to Congressman Johnson's office?—A. Or Congressman Boykin's. I took him over, yes.

Q. Do you remember taking him to Congressman Johnson's office?—A. No, sir. I heard Mr. Meyer's testimony. I don't mean to dispute it. I don't remember whether I took him to Congressman Johnson's office or Congress-[1268]man Boykin's office, or whether I took him to both offices. We all met, of course.

Q. Do you remember meeting in the House Office Building with Congressman Johnson and Congressman Boykin and Mr. Meyer?—A. Yes, sir.

Q. And all four of you went off together in a cab over to the Department of Justice?—A. Yes, sir.

Q. Do you recall all four of you or the three of them going first to the Attorney General's Office?—A. No, sir, I do not. I think that Mr. Meyer was in error on that. I certainly have no recollection of it, and I believe I would remember that.

Q. Do you remember seeing the Congressmen going into Mr. Miller's office with Mr. Meyer?—A. No, sir. I don't believe that was my testimony.

The COURT. I think that was not his testimony. My recollection of his testimony was that the two of them went in, Mr. Boykin and Mr. Johnson, and saw Mr. Miller first for a moment or two, and then Mr. Meyer came in later.

By Mr. WEINER:

Q. Is that your recollection of the way it happened?—A. Yes, sir.

Q. So you saw the Congressman go in first?—A. Yes, sir.

Q. And then you saw them get Mr. Meyer?—A. I don't remember whether one of them came out or the secretary told him they wanted him. I know the two Congressmen went in and shortly thereafter Mr. Meyer went in.

Q. And then shortly thereafter Mr. Meyer came out and you took him to the office of Mr. Cassidy, where he was interviewed?—A. That is correct, sir.

Q. And then you met him when he was finished with Mr. Cassidy?—A. Yes, sir.

[1269] Q. Now, I believe you testified yesterday that Mr. Edlin and you met with Mr. Caudle, and there was a discussion about a review of the case, and that the only hope or possibility of dismissal Mr. Caudle told you would be an absolute, complete, unqualified disclosure to the Department of Justice of all of the defenses and of any and all evidence that there was to justify the defendant's position; was that your testimony yesterday—A. Yes, sir.

Q. And that Mr. Edlin said that these charges were being brought not to prosecute him but to destroy him?—A. That is correct, sir.

Q. And then you, Mr. Caudle and Mr. Edlin all went over to Congressman Johnson's office?—A. Yes, sir.

Q. And that Mr. Johnson, on page 4333, again asked Mr. Edlin if he was sure that under those circumstances he wanted to have his case reviewed, and that Mr. Edlin again insisted that he was never afraid to have this case reviewed by someone that was impartial?—A. That was my testimony, sir, and still is.

Q. Isn't it true, Mr. Robinson, that Mr. G. C. A. Anderson, the man who was representing Mr. Edlin in that particular criminal case, was not consulted or even informed that the Congressmen were going to go over to the Department of Justice and discuss this case or make any disclosures of what defenses there were in that case?—A. To the best of my knowledge that is absolutely correct. I certainly never informed him. Mr. Edlin never told him in my presence, and generally speaking, when Mr. Edlin talked with any of these lawyers I was with him. Actually I was collecting the evidence in the case, and at that particular time Mr. Edlin was treating me as his counsel in the case. I was not his counsel of record, but I was assisting with the case.

Q. Is it not also true that the chief defense lawyer in that case was Mr. Paul Berman, who had entered his appearance for First Colony Savings and Loan Association?—A. I think that might be so.

* * * * *

[1270] Q. And isn't it true that when these discussions were being held and this decision was being made for the Congressmen to go over to the Department of Justice and to discuss the case and reveal defenses, Mr. Berman was never told about it?—A. To the best of my knowledge, he was not, sir.

Q. And in all the times that Mr. Edlin told you to go over to Baltimore to discuss matters about the case and different points that would come up with respect to the case with the lawyers, he never told you to tell them that the Congressmen were over in the Department of Justice?—A. I am sure he did not. I know he did not, and I would not do so.

CROSS EXAMINATION

By Mr. WILLIAMS:

Q. Mr. Robinson, when you were interviewed on January 26, 1962, by Mr. Strickland and his co-agent from the FBI, were you asked questions and did you give answers? Is that the form of the interview?—A. Yes, sir, it was a question and answer interview.

Q. Did either agent write down what you said in response to the questions that were propounded to you?—A. Yes, one of the agents was taking extensive notes. I don't know whether he took it down verbatim or not. I am not sure he was that good, but he was taking notes.

Q. Is it your testimony that they thereafter left and returned with a statement in narrative form?—A. Yes, sir.

Q. And that is the statement which you were shown here in this courtroom this afternoon?—A. I don't believe I have ever been shown it actually. I have what appears to be a complete copy of it. I am sure that is correct.

Q. I take it there is no dispute that they are the same?—A. I am sure they are, sir.

[1271] Q. What was the question, Mr. Robinson, that elicited from you the response that you had no actual knowledge of visits made to the Department of Justice?—A. The agents had been very particular throughout this interview, with a few exceptions, to ask me to maintain my testimony or statements in answer to them to those things that I personally saw and heard.

There were one or two times when they asked me, when I told them I had no knowledge of some items, when they asked me if I had any understanding or I had heard anything, in which case it is in here.

When we reached this area I particularly asked them. They represented that they were aware of the visits; that they already had knowledge of them. They wanted to know what I knew about them.

I said, "By that do you mean you want to know what I saw and heard? Or do you wish to know what I understand what I was told?"

He said, "We are only interested in what you witnessed. We don't want any hearsay in that regard." So I gave the answers, or at least he took the answer down as my having no knowledge. When it came back, I made him change that to actual knowledge.

Q. Actual knowledge of what?—A. Of these visits. In other words, I was not present during any of the visits. I didn't hear Congressman Boykin say something to the Attorney General or to Mr. Miller, and I didn't hear Mr. Johnson say something to the Attorney General or Mr. Miller. All I knew about it was what they told me at later dates, and the agents were very specific. They did not want from me in that area any hearsay, and that is why when they came back the correction made there was discussed with them, and we both agreed that to make this clearer we had better put the words "actual knowledge" in. It was meant to represent that I didn't personally witness their conversations or overhear their conversations with the Attorney General or with Mr. Miller.

[1272] Q. Mr. Robinson, on one occasion at least you went to the building which houses the Department of Justice with Mr. Boykin and Mr. Johnson, did you not?—A. Yes, sir, I did.

Q. Did you participate in any meeting with them on that occasion?—A. No, sir.

Q. Did you remain outside?—A. Yes, sir.

Q. Outside of the meeting or outside of the building?—A. Oh, outside of the meeting, sir.

* * * * *

Thereupon FRANK W. BOYKIN, a defendant, having been previously sworn, resumed his testimony as follows:

* * * * *

CROSS EXAMINATION (continued)

By Mr. TYDINGS:

* * * * *

Q. Now, Congressman, more than a month prior to your final settlement on April 29 on March 25, 1961, was the first time you went to the Attorney General, concerning Mr. Edlin, was it not?—A. Yes, it was March 25. Mr. Tydings, there

is no novelty for me to go to see the Attorney General. I have been doing it for 28 years and every other department of the Government.

Q. All right. Is it your recollection, Congressman, that sometime in the last of February——A. February when?

Q. 1961. That you called Congressman Johnson and told him that Lykes Boykin had contacted you and had informed you that there was a pending indictment against First Colony Savings and Loan Association and Mr. Edlin [1273] and certain other parties involving a mail fraud. Do you recall making such a call to Congressman Johnson?—A. I had my attorney Lykes Boykin to get a report on Mr. Edlin.

He called me and gave me the report. And I called Congressman Johnson and told him about it and asked him to come to my office and get Mr. Edlin and Mr. Robinson to come, too.

Q. And you told him that Mr. Lykes Boykin had advised you of a pending mail fraud indictment against Mr. Edlin and the First Colony Savings and Loan Association and other parties in Maryland?—A. I don't remember whether it was the indictment or whatever it was but he told me, what I have already told you and I phoned it to my friend Tom Johnson and asked him to get him up there quick and let us talk to him.

Mr. Edlin and Mr. Robinson, which he did. Mr. Johnson brought them up.

Q. Now, after you called Congressman Johnson, did you have a discussion with Congressman Johnson and in the discussion you were both concerned that such an indictment could have a great impact on the development because negotiations were under way with First Colony and First Continental for a very substantial loan and your concern was whether or not the indictment could interfere with the granting of the loan for the development of the property?—A. Of course we were.

Q. And that was, Congressman, some time in the last part of February, 1961?—A. I do not remember when it was. It happened. He called and gave me the report and I got these people up to explain it which they did, and then we worked on it from there.

Q. All right. Now, Congressman when you went in to see the Attorney General on March 25, 1961, why did you feel it necessary to discuss the land development in Charles County and to show him charts of the develop-[1274]ment of Wal-

dorf?—A. Because I thought that he certainly would be interested in this proposition which was so wonderful and I told him that I believe, if this went through, if this was a bad indictment, to review it.

I told him what it meant. I showed him the maps and plans and plats and pictures of Boykin City. I showed him that he had agreed to spend $2,300,000 on the property and it is a pretty good amount, at Brooke and I was talking to my friend. I was talking to a man that I had known his family forever and I just asked him to look into that indictment, and if it was faulty, then we would not have another thing to say.

Q. When you say you wanted to show him what it meant. You meant the fact that, if the indictment went forward, that the First Colony Savings and Loan Association might not—— A. That the First Colony was what?

Q. That the First Colony Savings and Loan Association might not be able to put up the money to develop the property, is that right?—A. Why, of course that is right. They would not have been either, because it ruined them as it did——

Q. You, in effect, were asking the Attorney General to take into consideration factors other than the merits of the case, itself, were you not?—A. No. I just asked him to review the indictment and I told him about the proposition. I was doing more for the Attorney General than he was doing for me. He had already asked me to get all this information for him, which I was doing, on the Dranow note.

Q. Now, Congressman, yesterday on direct examination you testified, did you not, in response to Mr. Williams' question: "And what was said to the Attorney General?"

This is page 5149, Mr. Williams, at the top of the page, and the answer:

> Well, he came out in the hall to meet me and Mr. Robinson was with us, also, with Congressman John-[1275]son and me, and we spoke, and I introduced him to Mr. Johnson and told him that he represented the properties, the Edlin group, and then I

and you went into some matters about the family.

A. That is what I told the Attorney General.

Q. And Congressman Johnson's representation of these properties in the Edlin Group was one of the reasons for his visit to the Attorney General, was it not?—A. He went down to tell him why he thought the indictment was faulty and the At-

torney General, after he had explained it, asked him to give him a memo on it.

Q. If that was not why, why did you feel it necessary to tell the Attorney General that Mr. Johnson was there representing the property-holders and the people there and the bankers and all the people that were going to furnish the money?—A. He was representing them down there on the land deals and he come down to explain the indictment there.

Q. Well, I think we may be at cross purposes.—A. I do not think we are. I just wanted to give him all of the facts.

* * * * *

Mr. TYDINGS. Yes. My question to you, Congressman Boykin, is, why was it necessary to tell the Attorney General that "Congressman Johnson represented these property-holders and people there, the bankers and all of the people that were going to furnish the money, and he knew all about the proposition," if it was not a part of his responsibility as a representative of the propertyholders and the Edlin group?

The WITNESS. Mr. Johnson had never met the Attorney General and I told him that he represented the savings and loans and the bankers and all of the people that Mr. Edlin was representing to furnish the money for this development. I also had told the Attorney General every single ounce that I knew about. I told him we owned [1276] a mortgage of $5,900,000 and I just gave the Attorney General all of the facts. I held back nothing. That is the reason I told him because that is the way I understood it was.

* * * * *

Q. Congressman, I ask you again, did you not tell the Federal Grand Jury, testimony as follows, on page 48:

> Q. What was said to the Attorney General about the case that was pending in Maryland, the indictment against Edlin and First Colony?—A. I don't know. Tom talked on that. I don't know what was said. He was there when I wasn't there sometimes, don't you see?

A. That is right.

Q. [Reading.]

> Q. What did Congressman Johnson hope to accomplish by talking about the case?—A. I don't know. He was representing him. He is a lawyer and he was representing his clients.

Now, do you recall saying that?—A. Yes.

Q. And is that the fact?—A. Yes, it is the fact and I told the Attorney General he was there representing the people. We withheld nothing.

Q. One other thing, the first time that either you or Congressman Johnson, according to your testimony, learned about the Edlin indictment was when you received that telephone call from Lykes Boykin sometime in the late part of February or the early part of March, 1961 or about a month before you and Congressman Johnson went to see the Attorney General?—A. No, I did not know about the indictment when I went to see the Attorney General. I had only told the Attorney General about the Dranow note. I do not know when Lykes Boykin gave me the information but the minute he did, I went and got these people and that was the first day I ever heard of it in my life that I had a report made.

[1277] Q. I see.

I think you and I agree. I think you misunderstood my question. I did not phrase it properly. You did not know about the indictment, neither you nor Tom Johnson until you received a telephone call from Lykes Boykin shortly before or about thirty days before you and Congressman Johnson went to see the Attorney General on March 25?—A. Oh, no. We went to see the Attorney General after I found it out and asked him if we could get him—if he would review it. I have done that many times, to the Attorney General in the past years, many times.

Q. Right.—A. I will be glad to give you some instances.

Q. You knew that Congressman Johnson was not representing Mr. Edlin in his criminal case, did you not?—A. No, sir, I did not know anything about the criminal case. This was the first time I had ever heard of it in my life and I sent for him to ask him to tell me about it.

Mr. Edlin had told me nothing about that.

Q. Well, now, when Congressman Johnson went to see the Attorney General, did you think he was representing Mr. Edlin as his lawyer in a criminal case?—A. I think he went to ask him to review it. He was representing everyone in the case. He was doing the land business.

Q. But he was not counsel of record over in Maryland in the criminal case?—A. I have no idea.

* * * * *

Q. Now, Congressman, you testified that in some of your visits to the Attorney General and to Mr. Miller, you were concerned about providing information relating to Mr. James Hoffa, Mr. Dranow, or a stolen treasury note.—A. I was not concerned. I promised the Attorney General—he asked me to get the information for him, and he sent one of his men up to get it and I called Congressman Johnson and asked him if he could get that information for me from Mr. Edlin and Mr. Robinson. He said he would be glad to. Then I talked to Mr. Edlin and [1278] Mr. Robinson and they promised to get it for me but they would put me off and I was two weeks getting the information and I told you what Mr. Edlin said, he did not want Mr. Hoffa and Bobby Kennedy both against him.

Q. All your information on Mr. Hoffa came from Mr. Edlin and Mr. Robinson, did it not, in this matter?—A. It was the Dranow note. It was not Mr. Hoffa. It said Mr. Hoffa approved the deal, told him to go ahead with it, and he was a partner of Mr. Dranow. I did not know either one of them.

Q. All your information in this matter, Congressman, came from Mr. Edlin and Mr. Robinson, did it not?—A. Oh, yes, and that is what I told the Attorney General.

Q. Now, Congressman, you knew, did you not, that during the spring and the summer and the fall of 1961, during the time that these contracts and the visits were made with the Attorney General and the Assistant Attorney General, that Mr. Edlin was trying to swap off his criminal case here in Maryland in return for providing alleged information about Hoffa, Dranow or the stolen treasury note?—A. I did not know it. Mr. Edlin asked me to get his case reviewed.

* * * * *

Q. Let me read for you again, Congressman, before we were interrupted. Page 49, the Federal Grand Jury testimony:

> Q. What did Mr. Edlin and Mr. Robinson hope would be accomplished by the Attorney General and the Department of Justice taking the case under advisement and studying it?—A. They were trying to swap off on Hoffa for that deal. I don't know, but neither one of them talked to Bobby, to Bobby Kennedy.

* * * * *

[1279] Q. [Reading.]

Isn't that true that what Mr. Edlin and Mr. Robinson hoped would be accomplished by the Attorney General?

* * * * *

Q. Just a moment, Congressman.

Now, is it not a fact that that is what Mr. Edlin and Mr. Robinson hoped would be accomplished by these visits to the Department of Justice?—A. No, they hoped that if they found the indictment was not good—Edlin told me that all he wanted was a review. I told you this before and that is all he wanted and that is all Congressman Johnson and I ever asked the Attorney General. They were asking us to do things, ten times more than we were doing for them.

More of these trips were to help them and get these men to go before the Attorney General. They must have had confidence in them. They wanted them to go to the Federal Court and swear against them on this deal, which they did do. They went three times.

Q. You deny then——A. Yes.

* * * * *

Q. And at these meetings, Congressman Boykin, you would do your best to explain to Mr. Robinson and to Mr. Edlin what a good job Congressman Johnson had done in presenting the Edlin case to the Attorney General or the Assistant Attorney General, would you not?—A. I am not an attorney, as you know. Mr. Johnson was doing that law part. The only thing I talked to him about was trying to get him to go down and go before the Grand Jury, for them not for me. I had nothing to do with the thing, and I told him that Tom had done a fine job, and I thought he had.

He explained this indictment, which I never saw. I never saw the memorandum or anything else, and I do [1280] think Tom Johnson did a good job on this land. He had a bunch of abstracts up to his breast there in his office. I went down one night at ten o'clock, and he was working on them.

Q. Let me ask you one final question. The reason you wanted to tell Mr. Edlin and Mr. Robinson that Johnson had done a good job in explaining the land to the Attorney General and the Assistant Attorney General was to try and get him a little

more money for his efforts for all the work he was doing, isn't that so?—A. On the land. I was hoping he would, because he was complaining about it.

Q. And that work included the efforts he was making in explaining the land situation to the Attorney General?—A. I did not say that.

[1281] In the United States District Court for the District of Maryland

ORAL ARGUMENT ON BEHALF OF THE GOVERNMENT

By Mr. MARION:

Mr. MARION. May it please the Court, Mr. Foreman, and Ladies and Gentlemen of the Jury: As we stand here today in the sunset of the trial in the eleventh week of the trial, we have finally reached the point where all of the testimony and the evidence in the case has been completed. At this time I wish to thank each and every one of you for your patience. I know I speak for all of counsel in this case when I tell you that we appreciate your interest and your attention throughout all eleven weeks of this trial.

At this time I will give the closing argument on behalf of the United States. After I have concluded, each of the defense counsel for each of the defendants will have an opportunity to address you, and then Mr. Tydings will have an opportunity thereafter to make any closing comments which he desires.

At the conclusion of those arguments Judge Thomsen will charge you as to the law. His instructions as to the law which are applicable to this case, he will tell you, are binding upon the jury. The Jury, however, must determine the facts in this case. And then at the conclusion of the Judge's charge, you will retire to deliberate and you will arrive at a verdict in accordance with the law as stated by Judge Thomsen and in accordance with the facts as you, the jury, find them.

When you do retire, we ask that you bring in a verdict which will insure that justice is done.

As Judge Thomsen indicated just a moment ago, it is for the jury to determine the credibility of all of the witnesses who have testified in this trial. And I feel sure he will instruct you further upon this matter in his charge.

Now, Members of the Jury, just as in the case of the open-

ing statements by counsel, the closing arguments in this case are not evidence. The evidence and all of the [1282] evidence in this case you heard from the witness stand from the various witnesses who appeared and testified here and from the documents and other exhibits which were introduced into evidence. The closing arguments are merely counsel's impressions which are given to the jury to aid the jury, if possible, in their assessment and evaluation of the facts in the case. And I wish to tell you this—if your recollection of the facts in this case is contrary to my recollection as I proceed in my argument or if your recollection is different from that of any other counsel in his argument to you, you may disregard entirely what is said about the facts and rely upon your own recollection of what the facts in this case are because, as I have indicated, you are the sole judges of the facts.

Now, back on April 1 of 1963, over two months ago, Mr. Tydings, in his opening statement, outlined to you the Government's case. We submit to you that we have proved that case beyond any doubt and that we have met what the defendants have offered by way of defense.

In the course of my closing argument I will address myself first to the speech which was given by Congressman Johnson on June 30, 1960. I will then discuss with you some of Congressman Johnson's claims here at this trial of certain legal work which was allegedly performed by him. I will then talk to you about Congressman Boykin's entry into this conspiracy and, finally, about the visits and contacts which were made by these Congressmen with the Department of Justice.

The Government submits, Ladies and Gentlemen of the Jury, that the conspiracy charged in this case had its inception in Miami, Florida on or about April 1 of 1960 and that Mr. Edlin and Mr. Robinson were the first two conspirators who joined themselves together to further the illegal purposes of this conspiracy. It began when Martin Heflin, a paid public relations man, flew to Miami on that day to meet with Mr. Edlin and Mr. Robinson to discuss the reactivation of the so-called "Institute of Independent Savings and Loan Associations."

[1283] Now, this Institute was designed to provide publicity which would be particularly beneficial to the First Colony Savings and Loan Association and the First Continental Savings and Loan Association, both controlled absolutely by J. Kenneth Edlin.

It also envisioned at that time a speech which would also serve as publicity, a speech to be given on the floor of the House of Congress by a member of the United States Congress.

By the first of May of 1960 Mr. Edlin's First Continental Savings and Loan Association was about to open its main office in Chevy Chase, Maryland. Mr. Edlin by this time and Mr. Robinson, his right-hand man, had gotten to know Congressman Johnson through their dealings with an Assateague Island Bridge project in which they had been negotiating against one another with regard to a proposed loan.

It was at the same time, approximately the first of May, Ladies and Gentlemen, that Mr. Heflin and Mr. Robinson met in a hotel room in Washington, D.C. to begin work on a preliminary draft of a speech which would later be delivered on the floor of the House of Congress. At that time the speech was dictated in rough form by Mr. Robinson and you will recall that two days later on May 3, 1960, Mr. Robinson wrote to Mr. Martin Heflin in Washington.

I am sure you remember Government exhibit No. 54, Members of the Jury. Mr. Robinson addressed this letter on May 3, 1960 to Mr. Heflin:

> DEAR MARTIN: I enclose herewith copy of the preliminary speech draft which you patiently listened to in my room. No corrections have been made. I leave that in your most able hands.
>
> Highest regards to you and your lovely wife.
>
> Very truly yours,
>
> W. L. ROBINSON.

[1284] You will recall, also, Members of the Jury, the draft of the speech which was attached with that letter, a speech which was prepared for delivery by a Congressman of the United States on the subject of Independent Savings and Loan Associations, designed to be beneficial to independent savings and loan associations, and particularly those controlled by Mr. Edlin.

You will recall that Mr. Heflin, when he edited this draft, went through and inserted at appropriate spots the two words, "Mr. Speaker," which indicated quite clearly that this was to be given by a member of the United States House of Representatives.

You will recall, also, from the testimony, Members of the Jury, that Mr. Heflin stated that several later drafts of this

speech were submitted to him after their preparation by Mr. Robinson and they were given to Mr. Heflin in order that he might edit them and revise them to make them suitable from a public relations standpoint to the point of view which Mr. Edlin and Mr. Robinson wished to get across.

Thereafter, in the month of May, 1960, a luncheon was held at the Congressional Hotel in Washington, D.C. In attendance at that luncheon you will recall were Mr. Edlin, Mr. Heflin, Mr. Rains, and Congressman Johnson.

I believe that the testimony has indicated that a Mr. Marshall Diggs was also present for a portion of that meeting and, at this time, according to the testimony, Mr. Heflin and Mr. Edlin went over with Congressman Johnson the proposed subject matter of the speech which they envisioned that he would make in the House of Representatives.

I think you will recall the uncontradicted testimony of Mr. Jackson Rains. I think you will recall that Mr. Rains was the accountant for the two savings and loan associations. He was also the very first witness whom the Government called to testify in this case.

As to the meeting, he testified as follows, Members of [1285] the Jury. He was being questioned by Mr. Weiner at the time.

> What, if anything took place when you got to Congressman Johnson's office?
>
> A. We went to lunch at the Congressional Hotel.
>
> Q. Who was with you, did you say?
>
> A. Mr. Edlin, Mr. Heflin, Congressman Johnson and myself.
>
> Q. Now, what, if anything, took place at this lunch that you have mentioned?
>
> A. All during the lunch Mr. Heflin was describing to Congressman Johnson the plight of the Maryland Independent Savings and Loans and citing the example of the financial condition of the Federal Savings and Loan Insurance Corporation which in effect, showed that its assets were less than one per cent of its insured liability and, therefore, the independents who might have mortgage insurance, would be a better investment than a Federal Savings and Loan, and also that some Federals have been advertising that their deposits were guaranteed by the United States Government when, in reality, they were not.

Q. What, if anything, did Mr. Edlin do during this lunch?

A. He would make a brief comment which would point out a point to Mr. Heflin to discourse on.

Q. What, if anything, did Congressman Johnson do?

A. He listened very attentively. In my opinion, he was hearing the information for the first time. And he asked intelligent questions.

Q. Now, can you tell us whether or not anyone—well, what happened at the end of the lunch?

A. It was agreed that Mr. Heflin would send Congressman Johnson a synopsis of what they had discussed.

[1286] This was a meeting, Members of the Jury, which you will recall was testified to not only by Mr. Rains, but by Mr. Heflin who was present. It was also testified to by Mr. Diggs who was present for a portion of that meeting.

This is also the meeting that Congressman Johnson told you on the stand he had no recollection of.

Later, Mr. Heflin went to see Congressman Johnson, himself, in his office and he was referred to Mr. Manuel Buarque. You will remember Mr. Buarque. He was the administrative assistant for Congressman Johnson who normally wrote Congressman Johnson's speeches.

Sometime thereafter, Members of the Jury, toward the end of the month of May, 1960, there appeared in the Washington Star newspaper an article which Mr. Heflin saw and showed to Mr. Edlin and to Mr. Robinson, and when they saw that article, the drafters of Congressman Johnson's speech had what Heflin had told them they needed, Members of the Jury, an ostensible reason for making a speech which they planned to make anyway.

I refer you particularly to the testimony of Mr. Heflin on this subject. Mr. Heflin, you will recall, was the short public relations man. I think he told you he was the brother of Mr. Van Heflin, the Movie Star. His testimony on this point, Members of the Jury, was as follows:

Q. What, if anything, was your complaint to Mr. Robinson and Mr. Edlin about it?

A. There was no timeliness in it. There was no reason to make the speech. This material merely rehashed and recited these various abuses alleged or otherwise and it was not the sort of thing that I felt anyone could be justi-

fied in making a speech about. There just was not a speech there. Nothing to hang your hat on.

Q. Nothing to hang your hat on? Did there subsequently come to your attention anything which you felt might be something to hang your hat on?

[1287] A. Yes, that was some weeks later when this newspaper story in the Washington Star came out.

Then, Members of the Jury, as a result of the understanding that has been reached at the luncheon at the Congressional Hotel which was quoted earlier from Mr. Rains' testimony that the thoughts which had been presented to Congressman Johnson at that meeting would be put in writing. Mr. Heflin and Mr. Robinson took a draft of the speech to Congressman Johnson in his office.

Mr. Heflin also testified to this matter and his testimony was as follows—he was being questioned by me at that time.

Q. After you discovered that article and brought it to the attention of Mr. Edlin and Mr. Robinson, can you state whether or not you had any occasion to meet Congressman Johnson again?

A. It was some time after that.

Q. You did meet him for the second time?

A. Yes.

Q. Where did you meet him on that occasion?

A. In his office. I met there with Mr. Robinson.

Q. Were you and Mr. Robinson alone when you went to his office on that occasion?

A. Yes, just he and I.

Q. What, if anything, did Mr. Robinson have with him then?

A. He had a draft of his article, of course, that had been published for some time, I do not know how long.

Q. He had a draft?

A. Yes, a draft of a speech.

Q. And he had a copy or copies of this article?

A. Yes.

[1288] Now, when I say "copies of the speech," it was material, you understand. Material for a speech along with this. And that was shown to Mr. Johnson.

Thereafter, Members of the Jury, Mr. Heflin continued to work on the speech most directly with Mr. Buarque and I think

you will recall in this regard the testimony of one of Congressman Johnson's former secretaries in his Congressional Office, Mrs. Frances Kiernan, who testified as to the work done by Mr. Heflin and Mr. Buarque on this speech. She was testifying on redirect examination by Mr. Burnett and testified as follows, beginning on page 1056 of the transcript.

> Q. Mrs. Kiernan, on cross-examination, Mr. Doub asked you what was your understanding as to who wrote the speech, and you answered "Mr. Heflin and Mr. Buarque."
>
> A. Yes, sir.
>
> Q. What was your understanding of the role that Mr. Heflin played in writing the speech?
>
> A. I do not have firsthand information on who wrote the speech. However, at the time of the speech, Mr. Buarque said to me, "Mr. Heflin is working on the speech and I am going to work on it with him."
>
> Q. Did Mr. Heflin ever bring a draft or copy of any speech to Congressman Johnson's office?
>
> A. There was a draft of the speech that came to the office.
>
> Mr. Heflin came in; to the best of my recollection he brought it.
>
> Q. What did Mr. Buarque do with this draft after he got it?
>
> A. I understood he was going to go through it and edit it. I mean, it was his custom to. Of course, he wrote the majority of his speeches because the Congressman did not have time to do it. It is my understanding he went through and made whatever changes he desired.

[1289] Now, in addition to the initial draft, Members of the Jury, Mr. Heflin furnished facts and figures and ideas to Mr. Buarque which found their way into the speech. Further, he planned with Mr. Buarque the proposed caption for the reprints which were to be ordered after the speech had been delivered.

Then, during the month of June 1960 when Mr. Edlin and Mr. Robinson had successfully made their arrangements with Congressman Johnson and knew that Congressman Johnson was going to deliver the speech they wanted, Congressman Johnson officially went on the payroll of the Edlin organiza-

tion and I am sure that you will remember the testimony of Mrs. Sadie Goldman as to this particular point. She was being questioned by Mr. Tydings:

> Mrs. Goldman, directing your attention to the period after you returned to Miami from Bethesda or Chevy Chase in May of 1960, do you recall any unusual incident involving Mr. Edlin in your duties as his secretary?
>
> A. Yes, there was one very unusual instance. He came in one morning and he was really very excited and very happy and we went through the usual routine of my going in with my book and he was sorting the mail, and he said, "Well, I have made a new"—and then there was an interruption. And her testimony continued on page 423.
>
> This was about the first week of June of 1960 when Mr. Edlin—this was a very unusual incident. Mr. Edlin came in very happy, sorted the mail and had a running commentary as usual about various things and then he said out of the clear sky, "Well, I have made a new contact. There is no stopping us now. The sky is the limit. We will have a chain of banks, Sadie. We are going to be rich."
>
> I looked up at him and he says, "Seriously, Sadie, it is a Congressman." And that was all.
>
> Well, I walked out of his room and Mr. Robinson was sitting in the outer office. There was no one else around and I said to Mr. Robinson, we were friendly, and I said, [1290] "Gee, what is he all hopped up about? He is acting like he realized his life's ambition."
>
> Mr. Robinson said, "Better than that." Did you ever—Well, he said, "Did you ever hear of Congressman Johnson?" I said, "No, I never did." He said, "You will hear plenty about him now. He is on our pay roll. It is costing Ken plenty."
>
> So, I interrupted. I says, "It never costs Ken anything. It always costs the firm."
>
> So, Mr. Robinson said, he was laughing and he said, "Well, there are no holds barred now. The sky really is the limit, Sadie," and with that he walked—and he had a cup of coffee in his hand and he walked to Mr. Edlin's private office.

Members of the Jury, by this time the Government submits to you that Mr. Edlin and Mr. Robinson, his right-hand man had bought their first Congressman. And a check was issued. Members of the Jury, on June 20, 1960, from Mr. Robinson to Congressman Johnson in the $500.00.

Now, I ask you to ask yourselves, members of the jury, whether it was mere coincidence that this check was issued just ten days before Congressman Johnson delivered the speech in the House of Representatives?

This was merely the first, Members of the Jury, of a series of payments which were made to Congressman Johnson or for his benefit. The reimbursement for that check was charged on the books of the Savings and Loan Association as "legal", even though it purported to be a campaign contribution.

This, Members of the Jury, marked the beginning of a pattern of payments all charged and reimbursed by the Savings and Loan Association to the land companies as though they were legal expenses to William L. Robinson.

And, Members of the Jury, the Government submits that the defense has never answered the question of why Mr. [1291] Robinson made a large campaign contribution to Congressman Johnson if their only contact then involved the Assateague Island Bridge matter, as lawyers representing adverse interests negotiating against one another with regard to a proposed loan.

Now, at the same time, Members of the Jury, Mr. Edlin and Mr. Robinson considered another even subtler form of payoff to Congressman Johnson for the speech. They arranged for Mr. Passman, a Chicago Attorney, who represented the St. Lawrence Insurance Company, to meet with Congressman Johnson on the very day that Congressman Johnson was to deliver that speech in Congress in order that Congressman Johnson might consider representing that insurance company in the State of Maryland. And, at that time, Members of the Jury, there were only two savings and loan associations in the State of Maryland which were then insured by the St. Lawrence Insurance Company and those two associations were the associations of Mr. J. Kenneth Edlin, the First Colony Savings and Loan Association and the First Continental Savings and Loan Association.

The following day, Mr. Passman wrote a letter to Congressman Johnson referring to his meeting in Congressman John-

son's office on June 30, 1960 and in the final paragraph Mr. Passman says:

> I regret that in addition to your press of business my time was too limited to permit the acceptance of your kind offer to see firsthand the working of the wheels of Government.

I ask the jury to consider whether or not the working of the wheels of government referred to in that letter was not, in fact, an invitation by Congressman Johnson to Mr. Passman to come over to the House of Representatives and hear him take the floor of the House of Representatives as a champion for J. Kenneth Edlin and give the speech which he did deliver that afternoon on June 30, 1960?

At the same time, Members of the Jury, you will [1292] recall the testimony of Mr. Rains at the time when Mr. Edlin showed him a carbon copy of the very speech delivered by Congressman Johnson—reading from page 166 of the transcript and this is Mr. Weiner's questioning of Mr. Jackson Rains, the accountant:

> Q. Now, can you tell us whether or not there came a time when you became aware of a speech by Congressman Johnson?
>
> A. Yes, sir.
>
> Q. Can you tell us whether or not you had occasion to speak with Mr. Edlin about it?
>
> A. Mr. Edlin showed me a typewritten carbon copy of a speech.
>
> Q. Now, before you go on, can you tell us where this took place?
>
> A. This took place on the premises of First Continental Savings and Loan Association in the stationery room which was more or less a private office.
>
> Q. Private office of whom?
>
> A. Mr. Edlin used it as a private office when he wanted to discuss something in privacy.
>
> Q. Can you tell us when this conversation took place?
>
> A. This was either immediately before or immediately after the speech. I am not sure which.
>
> Q. Now, tell us what took place at that time, please?
>
> A. Well, naturally, Mr. Edlin was always concerned that I was under indictment and he frequently pledged

to me that the indictment would never go to trial, that I would be out from under it.

And then there was an interruption and picking up the testimony on page 172:

Q. Tell us what was said during that conversation in the store room?

[1293] A. What was said in substance is Mr. Edlin was saying to me, "You see, we have friends on the Hill, we have nothing to fear on our indictment. These people are interested in us and the injustice we have been done."

Q. Did Mr. Edlin show you this carbon of this speech?

A. Yes.

Q. Did you read it?

A. I glanced over it hurriedly.

Q. Can you tell us how that compared, if at all, with the conversation which had taken place in the Congressional Hotel?

A. The pertinent points were there.

And thereafter, Members of the Jury, Mr. Edlin took a jubilant plane ride to Miami and several members of his staff and you will recall that Mr. Rains' testimony about that incident on the July 4th weekend of 1960 was so clear that not even Mr. Robinson—when he took the stand—could deny the incident.

Now, Mr. Robinson would have you believe it was all a big joke. What hollow laughter, Members of the Jury, that now seems—laughing over who would take the credit for the speech; whether it would be Mr. Edlin, who paid for it or Mr. Robinson, who had written it.

In addition to the speech, itself, Mr. Edlin was concerned with reprints of this speech. They were critical for his interests at that time. These reprints you recall were being discussed at the very time the speech was in draft form before it had been delivered. The heading or caption to be used on the reprints was suggested to Mr. Buarque by Mr. Heflin and 50,000 copies—reprints of that speech—were ordered by Mr. Edlin and his interests in July and August of 1960.

No one else ordered any reprints of that speech—only Mr. Edlin. 50,000 copies.

[1294] According to his testimony, Congressman Johnson promptly forgot about the speech. He had served his purpose, Members of the Jury, by making this speech and by allowing his Congressional office to be used for ordering the reprints but Mr. Edlin, of course, did not forget about the speech. He took, his 50,000 reprints, he marked them in red ink and he used them in deposit solicitation. They were used to induce prospective savers to put their money into First Continental Savings and Loan Association which had just opened its doors and they did it by suggesting to those prospective savers that First Continental's type of operation had been given Congressional sanction and you recall the testimony of Mr. Kunkel, the tall, thin man who was the executive vice president of the First Continental Savings and Loan Association.

And the testimony of Mr. Bradford Wyckoff, the former advertising manager for Mr. Edlin's companies. You will recall their testimony as to the use to which they put these reprints. You will recall I think also Government Exhibit No. 49 which Mr. Kunkel identified, the form letter which was used to answer questions which came to the savings and loan association, a form letter which indicated that they were enclosing a copy of Congressman Johnson's speech as verification of certain facts. And you will recall that attached to this draft is a copy of the reprint, itself.

Members of the Jury, you can see for yourselves, staring you big and bold at the top of that reprint the great seal of the United States and the emblazoned words "Congressional Record."

Members of the Jury, the defense has suggested two reasons for Congressman Johnson's making this speech. First, alleged outrage at the Washington Star article of May 27, and secondly, its use as a campaign issue. But, members of the jury, the speech had already been considered. It had already been discussed prior to May 27, of 1960. The speech was already in draft form prior to May 27 of 1960. The May 27th article was merely something which they could hang their hats on.

[1295] Now, in so far as the claim is made that it was to be used as a campaign issue, let me remind you that Congressman Johnson himself admits on the stand that no constitutent ever requested such a speech. He admits that no constituent ever discussed such a speech with him.

There is no evidence that Congressman Johnson discussed this speech with anyone but Mr. Buarque, Mr. Heflin, Mr. Edlin and Mr. Robinson. Congressman Johnson admits that no constituent ever complained of the May 27th article in The Washington Star. And that is not surprising since the article was buried on the 8th page of Section D of the Washington Star. No publicity ever emanated from Congressman Johnson's office about that speech. He never mentioned that speech in his weekly Newsletter to his constituents, his basic source of communication with his constituents and it was never mentioned in any newsletter.

Nor did Congressman Johnson ever order any reprints for himself to use in any campaign and he told you, Members of the Jury, that shortly after the speech had been delivered, he told a group of several people who came to his office that, so far as he was concerned, the matter was closed. He said he had no further interest in the subject matter and he gave no further speeches on that particular subject.

I submit to you members of the jury, there is no other logical explanation you can make but that that speech was made solely for the purposes of Mr. Kenneth Edlin. It was a day's work for a day's pay for the man to whom he was selling his Congressional Office and his Congressional influence.

Congressman Johnson has claimed on the stand in this case that he did not then know that the First Colony Savings and Loan Association was then under indictment.

Now, you will recall the language in the speech, itself, that out of 400 independent savings and loan associations [1296] in Maryland, exactly three of them have been indicted and none convicted.

Personally, I do not know any of these indicted institutions nor any of the circumstances leading to their respective indictments. I hold no brief for any of them one way or the other.

Congressman Johnson claimed under oath, Members of the Jury, that he did not even bother to check the facts to ascertain whether he could truthfully make such a statement in his speech.

If so, I submit to you, it was utterly and completely irresponsible and reprehensible, but the Government submits that that is not so and that that was not a fact. The Government submits that Congressman Johnson did know at that time that both First Colony and Mr. Edlin were then under indictment

in this very Court and that he, nevertheless made those statements in the speech which he delivered on June 30, 1960.

Those statements, Members of the Jury, the Government submits were completely untrue and deceitful.

You will recall that Congressman Johnson had just received ten days before the speech, a $500 check from Mr. Robinson. Mr. Robinson was a representative of one such indicted institution. He was reimbursed, Members of the Jury, for his check to Congressman Johnson, by a check of the First Colony Savings and Loan Association, one such indicted institution.

Furthermore, it is clear from Mr. Buarque's testimony that he knew the institutions which were then under indictment and he knew one of them was the First Colony Savings and Loan Association.

The Government asks whether Mr. Buarque was a totally credible witness for the defense or whether he was less than truthful when these admissions were finally gained from him on cross examination.

[1297] Mr. Weiner was questioning Mr. Buarque at the time.

Q. Now, in the speech you say you make no reference to First Colony but in the text of the speech you say, do you not, there are exactly three. I think that is the wording of the speech. Exactly three institutions under indictment but none tried. Is that right?—A. That is correct.

Q. And you did some research in determining which associations were under indictment at the time of the speech?—A. I did it, myself, because I get a daily newspaper.

Q. And you found then there were exactly three institutions under indictment, is that right?—A. Yes.

Q. And you found as to the status of each of them that none of those cases had gone to trial yet, is that right?—A. Oh, yes.

I understand an indictment is not guilt.

Q. And when you found these three indictments, these three cases you knew then, did you not, that First Colony and Mr. Edlin were under indictment at that time?—A. As I said before, I knew there was an indictment but that did not imply guilt as far as I was concerned.

Q. The question is, you knew that Mr. Edlin and First Colony were under indictment at that time?—A. I knew that First Colony was under indictment. I did not know that Mr. Edlin was particularly, no.

Q. You did not know particularly?—A. No.

Q. What do you mean, you did not know he was under indictment "particularly"?—A. I read in the paper that they alleged——

Q. They alleged he was under indictment?—A. That he was the head of First Colony.

[1298] Q. And that he was under indictment in that case?—A. That is correct.

Q. And when you discussed this speech with the Congressman before it was delivered by him on June 30, 1960 did you tell him that Mr. Edlin and First Colony Savings and Loan Association were under indictment?—A. We never discussed that phase of it at all.

Q. Did you ever during any of these times that you saw Mr. Edlin coming through the office, have occasion to inform the Congressman that Mr. Edlin was under indictment?—A. No, I did not inform him of any matter of that nature.

Q. You kept it all to yourself?—A. I presume it is in the newspaper. He can read as well as I can.

Q. You mean you presumed he knew it?—A. I presumed he could read as well as I can. I will put it that way, sir.

Q. And that he knew it?—A. I do not know. I do not know what he knew. I presume he reads the newspapers.

That was Mr. Buarque's testimony.

Now, Members of the Jury, the Government submits that it is incredible to believe that Mr. Buarque never told Congressman Johnson of this fact. We submit further that it is also incredible to believe that Congressman Johnson was unaware of the First Colony indictment which was then pending, not in California, not in Alabama, but right here in Maryland—his own state—pending right here in this Court, Members of the Jury.

Now, Congressman Johnson also claimed he did not know of First Colony or First Continental at the time he gave his speech. Under the circumstances and the testimony of this

case, Members of the Jury, we submit that [1299] assertion is preposterous. Congressman Johnson had been dealing with Mr. Edlin and Mr. Robinson for about six months in regard to a proposed loan in excess of $1 million. How could he have not known the background of these people with whom he was dealing?

You recall Congressman Johnson's cross examination where it was brought out that he had testified quite clearly under oath twice before in Montgomery County and before the Federal Grand Jury, that he knew when he was introduced to Mr. Edlin that Mr. Edlin was a representative of the First Colony Savings and Loan Association and that he was a representative of the First Continental Savings and Loan Association.

Members of the Jury, this speech was designed primarily for use by Mr. Edlin's associates; primarily for use by the First Colony Savings and Loan Association and the First Continental Savings and Loan Association. This speech was tailored to serve their particular needs. Only First Colony and First Continental, of all the independent savings and loan associations in Maryland were insuranced then with Commercial Mortgage Guaranty Insurance by the St. Lawrence Insurance Company and on June 30, 1960, the very day of the speech, Congressman Johnson was conferring with a representative of that company.

And, remember, too, that Mr. Edlin was the only one who ordered any reprints.

Members of the Jury, if Congressman Johnson's speech was not a part of a conspiracy to defraud the United States, as Congressman Johnson insists, why did he tell Mr. Estabrook in London that the speech was made at the request of his constituents when he knew that he had never discussed the proposed speech with any of his constituents? If Congressman Johnson had nothing to hide, Members of the Jury, why didn't he tell the truth? Does this not indicate a knowledge of his guilt?

Members of the Jury, if Congressman Johnson's speech was not a part of a conspiracy to defraud the United States [1300] as Congressman Johnson so insists, why did he tell Mr. Estabrook that he had written the speech, himself, when he knew as is clear from the testimony in this case that the speech had been written by Mr. Robinson, edited by Mr. Heflin and polished by Mr. Buarque. If Congressman Johnson had

nothing to hide, Members of the Jury, why didn't he tell the truth? Does this not indicate a knowledge of his guilt?

Members of the Jury, if Mr. Robinson's $500 check to Congressman Johnson on June 20, 1960 had no relation to the speech which was delivered ten days later by Congressman Johnson as Congressman Johnson and Mr. Robinson insist, why did both Congressman Johnson and Mr. Robinson fail to include that check when each first gave a written, signed statement to the Federal Bureau of Investigation? If they had nothing to hide, Members of the Jury, why didn't they disclose the truth? Does this not indicate a knowledge of their guilt? If the relationship between Congressman Johnson and Mr. Robinson in the period immediately prior to the speech was not a part of a conspiracy to defraud the United States as Congressman Johnson and Mr. Robinson insist, why did Congressman Johnson's first prepared statement to the FBI make it clearly appear that he met Mr. Robinson for the first time in August of 1960? Why did Mr. Buarque tell the FBI in early January of 1962 that Congressman Johnson and Mr. Robinson had never met until the spring of 1961? Why did Mr. Buarque tell the Federal Grand Jury that Mr. Robinson never came to Congressman Johnson's office prior to June 30, 1960? And why, Members of the Jury, did Mr. Robinson state to the FBI that he had not met Congressman Johnson until several weeks after the speech?

If the truth could not hurt them, Members of the Jury, if they were not attempting to hide the truth, why were they less than frank—why were they less than candid?

No, Members of the Jury, in fact, why did they lie? Why did they lie about Mr. Robinson's knowing Con-[1301]gressman Johnson before June 30, of 1960 and about that check of June 20, 1960?

I submit to you, Members of the Jury, that these denials clearly indicate a consciousness of their guilt, of the very matters for which they stand charged.

That, indeed, Congressman Johnson did make that speech for Mr. Edlin because he was paid by Mr. Edlin for making that speech.

Members of the Jury, we come then to the month of August, 1960. In this month Mr. Robinson on August 30, 1960 delivered the second check to Congressman Johnson. This was in the amount of $100,000. You will recall that that check

and the check of June 20, 1960 are identical on their face as issued by Mr. Robinson. There is no difference between those two checks other than the amounts and the dates of those two checks.

This, Members of the Jury, was the second installment to Congressman Johnson after the speech had been delivered and after Mr. Edlin had ordered 50,000 reprints through Congressman Johnson's Congressional office. Mr. Robinson was reimbursed for that check by a check from the First Colony Savings and Loan Association. No one yet has claimed that Congressman Johnson performed any legal work at that time for the First Colony Savings and Loan Association.

Further, according to Mr. Robinson's testimony, there had been no legal work performed by Congressman Johnson at the time that check was delivered. And no one who was involved in any alleged legal work performed by Congressman Johnson at that time except Congressman Johnson and except Mr. Robinson had any knowledge, according to the testimony in this case, of his alleged involvement. In fact, Members of the Jury, after delivering that $1,000 check to Congressman Johnson, allegedly as a retainer, Mr. Robinson went ahead to do all the legal work involved in making the loan to the Engineering and Development Corporation in early September, 1960, and he attended the [1302] settlement and had no further contact with Congressman Johnson about that settlement whatsoever. Mr. Robinson appeared at that settlement with Mr. Paul Berman—a Maryland lawyer—who represented the First Continental Savings and Loan Association.

Now, Congressman Johnson admitted that he never saw the original papers regarding that loan. And, although, Members of the Jury, Congressman Johnson was able to testify clearly on his direct examination, with the aid of prepared notes which he had made, on a number of exhibits he was totally unable to tell on cross examination which savings and loan association had made the loan to Engineering and Development Corporation.

Now, let me read you his testimony. On direct examination, Members of the Jury, he stated that that dealt with a $798,000 loan that had been made to First Continental Savings and Loan Association.

Q. By First Continental?—A. By First Continental.

Then several pages later in the course of an answer, he indicated that the lending institution was First Continental Savings and Loan.

When it got to cross examination, Members of the Jury, his testimony was as follows, being questioned by Mr. Marion.

> Q. Wasn't the Engineering and Development Corporation a First Continental Loan, sir?—A. I think it is a participating loan but Mr. Robinson is the one who at that time gave me the retainer. I had one retainer during the year 1960.
>
> Q. Now, do you know whether the Engineering and Development Corporation loan was a loan made by First Continental or not?—A. I have to refer to my file on that.
>
> Q. Do you know independently of your [1303] reference to your files?—A. No, because, as I told you, the Apple Grove I did not participate in that only after it was made.

He could not recall, Members of the Jury, which association made the loan.

Now, the defense even brought in Mr. Buarque, Members of the Jury, to tell you what alleged legal matters he had heard discussed in Congressman Johnson's office in the fall of 1960, and even in his effort to be helpful to Congressman Johnson, Mr. Buarque never testified to overhearing any discussions involving a Mr. Kastner who was the principal in Engineering and Development Corporation or Apple Grove or the Engineering and Development Corporation.

What Mr. Buarque claimed he did, in fact, hear in the fall of 1960 were discussions of the Cassell transaction which were not even—if you accept Congressman Johnson's and Mr. Robinson's testimony, brought to Congressman Johnson's attention until February of 1961.

Now, Congressman Johnson and Mr. Robinson both give conflicting testimony as to the check of August 30, 1960. Congressman Johnson testified that at the August meeting with Mr. Robinson, it was agreed that "there would be a $1,000 retainer for my services." On the other hand, Mr. Robinson testified that the actual amount of compensation was not discussed at that meeting, but both do agree now, Members of the Jury, when they testify in this case that that check of August 30 was a retainer check but neither one of them told that

to the FBI in January of 1962. Both then claimed that that check was in payment for legal work which Congressman Johnson had actually performed.

Then, Members of the Jury, to buttress his claim of having actually performed legal work on these Engineering and Development Corporation loans, Congressman Johnson produced copies of several legal papers. These were the first of a long series of documents which you will recall on [1304] which Congressman Johnson has, since the time he knew he was under investigation in this case, placed a number of penciled notations in his own handwriting.

I submit to you, Members of the Jury, that these documents were marked to give the jury the false impression that Congressman Johnson had reviewed the documents, back in 1960 and 1961. And that the notations had been made at that time, but Congressman Johnson forgot one thing, Members of the Jury, he forgot that he had obtained copies of several of these documents; that he had made thermofax copies of the copies he had obtained without any penciled notations and had handed those thermofax copies to the FBI in January of 1962. If it were not for that fact, Members of the Jury, it is entirely possible that Congressman Johnson might have been able to perpetrate a fraud upon you and upon this jury. If Congressman Johnson had done the legal work which he now insists he did, why was it necessary, Members of the Jury, for him to falsify documents to create a fraudulent impression for work that had not in fact been done? Why was Congressman Johnson satisfied with the truth, Members of the Jury, if the truth could not hurt him? If Congressman Johnson had, in fact, done any legal work on the Engineering and Development Corporation Loan matter, why did he on four separate occasions give four separate and inconsistent statements about the so-called advice which he allegedly gave Mr. Robinson with regard to those loan papers?

I refer to the cross examination but first I call to your attention a letter purportedly written on August 25, 1960, in which he said, Members of the Jury, that the loan agreement must be rewritten. In that letter he was advising Mr. Robinson that the loan agreement must be rewritten and he says that was his recommendation to Mr. Robinson, but before the Montgomery County Grand Jury he said that the mortgage notes should be rewritten and they should be rewritten to in-

clude what was set forth in the loan agreements, that the notes should be rewritten to incorporate what was in the loan agreement. He changed that [1305] again when he testified before the Federal Grand Jury and said that the mortgage notes should be rewritten because they did not incorporate the terms of the mortgages. So that the notes should be rewritten to incorporate the wording of the mortgages.

Finally, when he testified on direct examination in this case, Members of the Jury, he testified that he advised Mr. Robinson that the mortgage should be rewritten and that the mortgage should be rewritten to incorporate the terms of the loan agreement. Four explanations, all inconsistent. Do they not indicate, Members of the Jury, that he had no conception at any time of what, if anything, he might have done?

And then we went further with that line of questioning, Members of the Jury, and Congressman Johnson admitted that neither the mortgage nor the two mortgage notes, nor the loan agreement were rewritten by him or by anyone else but yet, Members of the Jury, he had told the Federal Grand Jury that he had in fact revised the mortgage note. He was taking credit for legal work which he later admitted he did not do. If he, in fact, had done this legal work, Members of the Jury, why did he have to be untruthful before the Federal Grand Jury, under oath? Why did he have to claim that he had revised these mortgage notes which he knew he had not in fact revised?

And, in referring to the letter of August 25, 1960 purportedly written on that date, Members of the Jury, I submit to you that this letter, a photostatic copy which we have was a phoney letter and that Congressman Johnson knew that this letter was phoney and he avoided putting in to evidence either the original or an office carbon copy of that letter. He was afraid, Members of the Jury, that that letter would not stand close scrutiny.

Back in January, 1962, Members of the Jury, Congressman Johnson was not hesitant about giving that thermofax copy to the Federal Bureau of Investigation in an effort to [1306] make it appear as though he had done some legal work in 1960. And even though he was questioned sharply about it while he was on the stand under oath, he never produced his original carbon copy from his office files nor did Mr. Robinson who appeared as Congressman Johnson's witness, nor did he produce the original. In fact, Members of the Jury, Con-

gressman Johnson never testified that he ever sent the original of this letter to Mr. Robinson. Mr. Robinson never testified that he ever received the original of that letter.

Members of the Jury, this is the only evidence which even suggests that Congressman Johnson wrote to Mr. Robinson at all during the entire year of 1960. The letter purports to have been written from Berlin on August 25, 1960 but, as you recall from the testimony, Congress was then in special session in Washington, D.C. and according to Congressman Johnson's own telephone records, they indicate quite clearly that he, too, was in Washington on August 25, 1960 not in Berlin.

Ask yourselves, Members of the Jury, whether the carbon copy from which the thermofax was made was not, in fact, prepared by Congressman Johnson sometime in early January of 1962 at a time when he knew that he was under investigation, solely for the purpose of providing the FBI some purported documentation for legal work allegedly done in August or September of 1960 and for the purpose of providing a justification, Members of the Jury, even though a fraudulent justification for his receipt of a $1,000 check from Mr. Robinson, five days after the date which this letter bears.

Ask yourselves, Members of the Jury, whether an innocent man would have found it necessary to have engaged in such deception?

Congressman Johnson also claimed, Members of the Jury, that in December, 1960, he participated in the preparation of certain loan papers involving a proposed loan to the Savarin Development Corporation. This was property [1307] which you will recall involved the Green Meadows Apartment House Project.

In that regard I ask you to consider the following pertinent points, Members of the Jury, as developed by the testimony of Congressman Johnson, himself. He admitted on the stand that he had never mentioned the name of the Green Meadows Apartment House loan or the name of the Savarin Development Corporation when he testified before either the Montgomery County or the Federal Grand Jury.

Members of the Jury, he admitted that he never testified before either of those two grand juries as to any alleged legal work between September of 1960 and February of 1961.

Congressman Johnson could not tell you, Members of the Jury, whether he found the papers which he introduced in evi-

dence relating to this loan in his own office or in Mr. Robinson's office and he could not tell you whether he ever saw those papers in December of 1960 even though those papers now bear notations in Congressman Johnson's own handwriting.

Once again, Members of the Jury, on cross examination, Congressman Johnson was unable to recall what his testimony had been on direct examination. When he testified on direct examination, he stated—under questioning by Mr. Doub:

> Q. And you participated in that preparation?—A. I did participate in the preparation of the entire loan agreement, the mortgages.

And this refers to the Savarin Loan. But, on cross examination, Members of the Jury, this was his testimony, being questioned by myself:

> Q. Congressman, you testified on direct examination as to work you say you did in connection with the preparing of the loan—agreement regarding the Savarin Development Corporation, is that correct?—A. I told you I had prepared a charter for the Savarin [1308] Corporation, and minutes and by-laws and they were prepared by me.
>
> Q. Did you not also testify that you participated in the preparation along with Mr. Robinson, of the loan agreement and the other loan papers in connection with that loan?—A. I participated only to the degree that we ran into serious legal complications because the proposed loan dealt with two tracts.
>
> Did you or did you not prepare or participate with Mr. Robinson in the preparation of the loan papers which are contained in that defendant's exhibit 50-G which I showed you earlier this morning that sheaf of papers regarding the Savarin Development Corporation?

That was this exhibit and his answer was:

> Would you show it to me again? I do not recall.

Then the question:

> Johnson Exhibit 50-G and it contains does it not, copies of the various loan papers in connection with that loan?—A. Yes, I think that my testimony that Mr. Robinson prepared the loan agreement, he consulted with

me. It was only on a consultation basis. There was a mortgage and other papers.

Q. All right. Now, my question, Congressman, is, did you or did you not assist Mr. Robinson in preparing those papers, those loan papers which comprise Defendant's exhibit 50–G?—A. Well, I assisted from the standpoint of consultations, legal advice.

Q. But did you go over these papers before they were typed in final form?—A. Through discussion with Mr. Robinson.

Q. Did you ever look at them in December of 1960?—A. I do not know whether I noticed these or Mr. Robinson's rough draft. That I do not know.

[1309] Q. Are you testifying that you either saw these or you saw a rough draft of these?—A. I can say that Mr. Robinson consulted me time and again in respect to this very difficult proposed loan which we never made.

Q. Congressman, I am trying to find out whether you actually did any work on what turned out to be the papers, the loan agreement and the other sheet in that?—A. I told you I did consultation with Mr. Robinson. He consulted with me in regard to the provisions to be contained in the proposed loan agreement, the mortgage and other papers.

Q. Did Mr. Robinson ever show you the original or any draft of any loan agreement?—A. I do not recall his showing me the original but definitely we had many hours of discussion there on this particular project.

Q. Is it your testimony then, Congressman, that you do not recall ever having seen any of those papers in December, 1960, which comprise Defendant Johnson exhibit 50–G.—A. Mr. Marion, I do not know what papers were shown to me. Mr. Robinson spent considerable time with me, discussing this particular proposed loan.

And then, Members of the Jury, I refreshed his recollection from his testimony which he had given on direct examination, and then he said, "Since you read it. I did work with Mr. Robinson when he had his secretary to come from Florida.

Q. All right.

Now, do you recall that you so testified on Monday, May 6 or do you recall what actually took place in December of 1960?—A. I recall both.

> Q. Which is the correct version of whether or not you participated in the preparation of those papers?—A. That I participated. What I testified to.
>
> [1310] Q. You did participate in the preparation of that loan agreement, is that your testimony?—A. Yes.

And yet, Members of the Jury, when he finally decided on cross examination that he had, in fact, participated in the preparation of those loan papers, that loan agreement, it developed, you will recall, that he had told the Federal Grand Jury under oath that he had never participated and never prepared any loan agreement for either First Colony or First Continental. His testimony on those matters before the Federal Grand Jury was quite explicit.

> I did not prepare any loan agreement on the part of First Continental or First Colony for any loan.

And on the following page:

> I worked in conjunction with the other attorneys but not in any loan agreements.

I ask you to consider, Ladies and Gentlemen of the Jury, whether or not the only legal connection which Congressman Johnson had with the Savarin loan was not in fact the study which he made immediately prior to his testifying on the stand in this case in 1963. I ask you to consider, Members of the Jury, whether Congressman Johnson was not in fact untruthful to this Jury from this witness stand under oath when he told you that he performed legal work in connection with this Savarin Loan?

Members of the Jury, these are not mere details. These are the frantic fabrications of a man who knows that he is guilty.

Now, in February of 1961, Congressman Johnson claims to have engaged in certain legal work involving a loan from the First Colony Savings and Loan Association to Mr. A. I. Cassell. Members of the Jury, when you come in and cut through all of that testimony, this involved little more than having Congressman Johnson look at a printed form, a printed form of mortgage in order to determine that 305 identical printed forms of mortgage lacked an affidavit of consideration which Mr. Robinson had known since Sep-[1311]tember of 1960—five months before, were required on all Maryland mortgages.

This is the type of printed form, Members of the Jury, such that once you have seen one, you have seen them all.

When Congressman Johnson made this revelation, the mortgages, the printed forms were sent to Mr. Harry Adelberg in Baltimore for his correction of the so-called "defect."

Congressman Johnson's lack of knowledge of the matter was illustrated by his confusion when he testified under oath before the Montgomery County Grand Jury, he could not recall how many there were. He thought there were maybe 300, 400 or 500 and then he settled on 600 and then he tried to tell the Montgomery County Grand Jury that his review of 305 printed mortgages or 600 or how many he settled on, identical printed forms, he found half of them defective.

I ask you how can half or 305 identical mortgages be defective and the other half not defective?

And Mr. Adelberg likewise claimed, Members of the Jury, when he testified as a witness on behalf of Congressman Johnson in his direct examination that Congressman Johnson assisted in making the correction which was required for the absent affidavit. But you will also recall, Members of the Jury, that Mr. Adelberg had testified before the Federal Grand Jury in January or February of 1962 that Congressman Johnson did not participate in the work on the Cassell mortgages.

Mr. Adelberg also told the FBI when they interviewed him in January of 1962 that Congressman Johnson had not done any of this work, that, in fact, Members of the Jury, Congressman Johnson did not even know when he gave his prepared statement to the Federal Bureau of Investigation and when he testified before the Montgomery County Grand Jury how the correction was made. His prepared statement indicates that new indentures—plural—[1312] several, had to be prepared. When, in fact, Mr. Adelberg prepared a single confirmatory mortgage.

Congressman Johnson also told the Montgomery County Grand Jury that "We rewrote the mortgages," which just simply was not done.

Once again, Members of the Jury, Congressman Johnson could not recall on cross examination what he said previously testified to on direct examination, and his testimony was as follows:

> Q. I also believe you testified in this connection, Congressman, that after you had discussed these Cassell mortgages with Mr. Harry Adelberg of Baltimore, the two of you agreed that one confirmatory mortgage

would suffice to correct the absent affidavit; was that your testimony?—A. Which testimony is that?

Q. Your testimony before this jury.—A. It could have been. I do not recall.

Q. Well, do you want me to refresh your recollection?—A. I would say that it is.

The COURT. In about five minutes we will take a recess. When you are at an appropriate breaking point.

Mr. MARION. Then two pages later:

Congressman Johnson, the confirmatory mortgages, the one confirmatory mortgage which was in fact prepared, was prepared, was it not, by Mr. Harry Adelberg?—A. I would say it was prepared by Mr. Adelberg after possibly considerable conferences.

Q. Isn't that what you previously testified here to, that it was prepared by Mr. Adelberg?—A. I presume I did. I do not recall.

Members of the Jury, I submit to you that after Congressman Johnson on direct examination was forced to leave his prepared script, he just could not remember what he was supposed to have done.

[1313] Finally, Members of the Jury, Congressman Johnson never knew when the confirmatory mortgage was prepared by Mr. Adelberg. He never knew that it was never fully executed nor did he know that it was never recorded.

Now, also, in connection with the Cassell loan—Congressman Johnson claimed on the stand under oath that he did some work in regard to a mechanic's lien involving a contractor by the name of Humphreys. Mr. Humphreys never knew anything about it. Mr. Humphreys' lawyer never knew anything about it. Mr. Cassell never knew anything about it. And Mr. Cassell's lawyer never knew anything about it. In fact, Congressman Johnson never knew who Mr. Cassell's lawyer was.

In connection with this so-called "legal work," Congressman Johnson never knew enough about it to determine whose lawyer he was and on whose behalf he was allegedly acting.

Members of the Jury, what kind of legal work is that? I think this would be a good time to break.

The COURT. The jury will take a recess for not more than 10 minutes.

[A ten minute recess was taken.]

The COURT. Mr. Marion, you have been about an hour and

a quarter. If you go another hour and a quarter until lunch, if you are not finished, then you can start again after lunch.

Mr. MARION. I have covered roughly half, Your Honor.

The COURT. If you want, I will give you a rap about five minutes of 1. If you want to run on and finish, let me know. If you want a break at 5 minutes of 1, let me know.

[1314] ORAL ARGUMENT ON BEHALF OF THE GOVERNMENT—(continued)

By Mr. MARION:

Mr. MARION. If Your Honor please, Members of the Jury: Let us look back now to early January of 1961. It was at that point that the fourth member joined this conspiracy. Congressman Frank W. Boykin was then entering his 27th year in the House of Representatives. In addition, he was a successful businessman with large timber interests.

During the 1950's he had acquired two tracts of land about which you have heard considerable testimony. He had acquired those tracts for timber purposes, one in Charles County, Maryland and the other in Stafford County, Virginia.

Let us take a look at the Stafford County, Virginia tract. In early January of 1961 the tract consisted of approximately 4700 acres of land and had been acquired in the early 1950's for a total cost of $154,000 or approximately $33 per acre. The tract had been timbered for several years.

Then in 1955, approximately 4,000 acres—the tract as it existed at that time—was sold to Stafford Estates. Stafford Estates put $17,500 down, and Congressman Boykin took in the name of Tensaw Land and Timber Company a purchase money mortgage with his land as the sole security, but which, if that development had been successful, would have allowed Congressman Boykin in the name of the Corporation, Tensaw Land and Timber Company, to receive an additional $342,500 or approximately $92 per acre.

Stafford Estates was unsuccessful. It never sold any portion of the tract. Stafford Estates finally folded—you will recall the testimony—in 1957 and in 1957 Congressman Boykin was forced to foreclose, and Tensaw Land and Timber Company repurchased the property at a foreclosure sale for the cost of $150,000, or approximately $38 per acre.

[1315] Sometime later Congressman Boykin tried again. You

We heard some testimony about Mr. Sigmund Pines, but all Congressman Boykin could get from Mr. Sigmund Pines was $100 down payment on that tract of land.

Congressman Boykin thought so little of that deal that he never bothered to record the purchase agreement with Mr. Pines. That deal likewise fizzled. So that in 1961 Congressman Boykin, in the name of Tensaw Land and Timber Company, still held the property which at that time was assessed by Stafford County, Virginia at $87,000.

The tract of land, Members of the Jury, in Charles County, Maryland was approximately 8,000 acres. It, too, had been acquired in the early 1950's at a total cost to Congressman Boykin of some $505,000 or approximately $75 per acre. This property, too, was timbered for several years and then in 1958 Congressman Boykin persuaded Mr. Arthur Desser of the Lefcourt Realty Company, a developer, to put $100,000 down on a purchase of that property and Congressman Boykin took back in the name of Mr. Albert Ernest, a purchase money mortgage, again with the land as the sole security and which purchase money mortgage, if Mr. Desser had been successful in developing the land, would have allowed Congressman Boykin to receive an additional $5,900,000.

Mr. Desser immediately began to run into problems. He had a problem with the topography of the land, itself. The land was flat. It was marshy, etc. It was uncleared. The sewage and drainage problems were almost insurmountable. To solve those problems, according to the testimony of Mr. Lykes Boykin who ppeared as a defense witness, would have required an expenditure of in excess of $1 million.

Mr. Desser also had difficulty, you will recall, in getting any sort of workable proposal or agreement with the Charles County officials and the Maryland Department of Health with respect to the sewage problem which existed on that tract. [1316] Finally, in 1960, Mr. Desser entered into an agreement with the Charles County officials under which he had to pay the entire cost of installing any sewage system.

Mr. Desser also had the problem of the inability to obtain from the Federal Housing Administration its approval of his proposed project. You heard the testimony of Mr. Barringer, who was in charge of the Washington office at that time, of the Federal Housing Administration. He indicated that he told Mr. Desser and his people that there was no evidence of any

market-ability for housing in that area except on a low-cost, small-scale, local basis.

Mr. Desser was unable through the year 1960 to secure any financing for a development of that property. No lending institution was willing to lend Mr. Desser money. All they gave Mr. Desser on his proposals for financing was a cursory examination and then an immediate rejection.

At this time in early 1961, the tract of land in Charles County was assessed by Charles County at $385,000.

Mr. Desser had made only one interest payment in three years to Congressman Boykin. Congressman Boykin had been forced to grant seven extensions to Mr. Desser, and it became apparent then, at the end of 1960 or early 1961 to Congressman Boykin, Mr. Desser would pull out if financing were not made available for a development of that property.

Congressman Boykin was then faced with the prospect of foreclosure of that tract and the attendant problems of a foreclosure. At this time, Members of the Jury, Congressman Boykin needed a J. Kenneth Edlin who had money running out of his ears, to pump into this land for development purposes and to bail him out.

This was the critical problem which brought Congressman Boykin into this conspiracy. It was in this context, Members of the Jury, that in early January of 1961, according to the testimony, that Congressman Johnson [1317] introduced Congressman Boykin to Mr. J. Kenneth Edlin and Mr. William L. Robinson. At that time Congressman Boykin had a problem, but Mr. Edlin likewise had a problem. Each though, Members of the Jury, had something to sell. Mr. Edlin exercised absolute control over the depositors' funds in two savings and loan associations, the First Colony Savings and Loan Association and the First Continental Savings and Loan Association.

He had the money, Members of the Jury, which could be made available for the development of Congressman Boykin's land. Congressman Boykin, on the other hand, had something even more precious to offer. He had rank, he had power. He had prestige. He had position in the Congress of the United States and in addition, he had a personal acquaintance with the Attorney General of the United States.

In short, Members of the Jury, Congressman Boykin had Congressional influence which he was willing to peddle. It

was at this point in time, Members of the Jury, that Mr. J. Kenneth Edlin and his chief aid, Mr. Robinson, bought their second Congressman, Congressman Boykin first tried to get Mr. Desser and Mr. Edlin to come to terms on a development loan to Mr. Desser but this was to no avail. There were several bargaining sessions in regard to this proposed loan and you will recall that Congressman Johnson claimed on the stand that he had participated and was present at many of these meetings and that this was part of his alleged legal work on behalf of the Edlin interests.

But you will recall also, Members of the Jury, that both Mr. T. Lamar Caudle—who appeared early in the trial as a government witness—and Mr. Lykes Boykin, who appeared more recently as a witness for the defense both testified that Congressman Johnson did not attend those meetings. Nevertheless, Mr. Robinson, when he testified, and Congressman Boykin, when he testified, adopted the Johnson line and testified to you, Members of the Jury, that [1318] Congressman Johnson was in fact, present at those meetings.

I ask you whether or not in this regard the testimony of Mr. Caudle and Mr. Lykes Boykin is not more credible and more worthy of your belief than the testimony of Mr. Johnson, Mr. Robinson and Mr. Boykin—Congressman Boykin?

When the Desser negotiations finally broke down, Congressman Boykin along with Congressman Johnson, had already visited the Attorney General of the United States on behalf of Mr. J. Kenneth Edlin. But in order to make it worthwhile for him to continue to exert his Congressional influence on the Department of Justice, Congressman Boykin upped the ante to Mr. Edlin at that point. He extracted, Members of the Jury, an agreement from Mr. Edlin to buy not only the Charles County Land but the Stafford County, Virginia Land, and that is clear from Congressman Boykin's letter.

Let me read you from Government Exhibit 113–C, a copy of a letter which Congressman Boykin wrote on May 2, 1961 to Mr. Austill Pharr of the First National Bank of Mobile. He says on the second page of that letter:

> Then I would not sell one place without the other. So, we sold him the Brooke, Virginia property for $3 million.

And secondly, he extracted from Mr. Edlin, Members of the Jury, an agreement to make available for development pur-

poses not just $2 million, but $3.5 million, $3 million for the development of the Charles County tract and half a million dollars for the development of the Stafford County, Virginia tract.

And that, too, appears in Congressman Boykin's letter to Mr. Pharr.

"He has agreed," speaking of Mr. Edlin, "to spend $3 million on our Waldorf property and I sub-[1319]rogate 1,000 acres for him to spend this on. Also he agrees to spend a half million dollars on the Brooke property."

Finally, Members of the Jury, Congressman Boykin extracted from Mr. Edlin the additional agreement that Mr. Edlin would bear the cost of a foreclosure to foreclose the Desser interest in the Charles County land. To save Congressman Boykin the expense of foreclosure, Mr. Edlin had to take and bear that cost. I read from Government exhibit 113–D, a letter from Congressman Boykin to Mr. Henry Holland of July 3, 1961.

> Mr. Edlin agreed to pay for the foreclosure which was $25,000. We will not have to pay the cost on the foreclosure and Mr. Edlin had to give a bond for this $6 million-some odd and we will not know the exact amount until you send it to us or maybe we will have to do it here. Anyway, figure on what you think it is and we will do the same here.
>
> Then the premium which Mr. Edlin will have to pay on foreclosing is $11,000, so you see, the foreclosure would cost us about $36,000 and then, of course, legal fees. So, I am thankful we are out of that.

Then on April 29, 1961, Members of the Jury, Mr. J. Kenneth Edlin purchased in the name of the Charles County Land Company the Ernest mortgage on the Charles County tract in order to foreclose that tract at no expense to Congressman Boykin, and he also purchased in the name of the Liesure City Land Corporation the Stafford County Virginia tract. That night $250,000 was delivered by Mr. Edlin to Congressman Boykin in cashier's checks as the binder on the transaction and you recall Congressman Boykin's letter in this regard, the same letter to Mr. Austill Pharr of May 2, immediately after he received those checks.

He told Mr. Pharr in that letter:

> Well, anyway, we are getting along pretty good and if we never got anything else out of it but the [1320] $250,000 cash, which I sent you yesterday morning, we would be all right. But we will get it all or get the money back.

And you will also recall, Members of the Jury, that after this transaction had taken place on the weekend of April 29, 1961 Congressman Boykin's son was pleasantly surprised with the sales of these two tracts. He thought it was very good news and you recall, I am sure, the letter which he wrote on May 3, 1961 to Mr. Lykes Boykin:

> This sale and the one at Waldorf are certainly good news, he said. It seems that Dad has done the impossible again.

Now, Members of the Jury, why was Congressman Boykin able to do the impossible? I submit to you that it was because there was a part of that bargain that was not put in any recorded instrument. It was Congressman Boykin's agreement to continue to exert his Congressional influence on Mr. Edlin's behalf before the Department of Justice. That was really what made this deal possible, Members of the Jury.

Now, Charles County Land Company and Leisure City Land Company also served another useful purpose for the four defendants in this case. They were the corporate conduits through which savings and loan association funds were funneled to Congressman Johnson ostensibly as legal fees but in reality we submit, Members of the Jury, for his cooperation in exerting his Congressional influence on the Department of Justice.

There was, of course, certain legal work which was and had to be done for Charles County Land Company and Leisure City Land Company and by whom was it done? Several other lawyers were engaged actually to perform the required legal work.

In Virginia there was Mr. Hunter Andrews who incorporated the corporation. Then there was Mr. James Ashby, Jr., Mr. J. Wilson Ingram, Mr. J. M. H. Willis, Mr. [1321] Frank Moncure and in Maryland there was Mr. Harry Adelbergh who incorporated the Charles County Land Company and Mr. Rudolph Carrico and Mr. F. De Sales Mudd of Charles County.

Congressman Johnson claimed that he was promised a total legal fee of $25,000 for work in connection with the two land

companies, and that this agreement was reached at a meeting or a conference which was held on May 2, 1961 at which were present Congressman Johnson, Congressman Boykin, Mr. Edlin and Mr. Robinson.

Members of the Jury, never before his direct testimony in this case had Congressman Johnson mentioned—not to the Federal Bureau of Investigation, not to the Montgomery County Grand Jury, not to the Federal Grand Jury, this alleged meeting of May 2, 1961, and agreement to receive $25,000.

Upon his receipt, Members of the Jury, you will recall, of $10,000 in the month of May, 1961 from the two savings and loan associations, the check stubs showed legal fees in full Brooke, and legal fees in full-Waldorf.

There has been no explanation of why those check vouchers showed that legal fees in full had allegedly been paid after a mere $10,000 of the entire $25,000.

You also recall that Congressman Johnson told the Federal Grand Jury when he testified there under oath, that we had not discussed a final, or even fees in detail, referring to the time when he was appearing five to seven months before the Department of Justice.

Mr. Robinson told the FBI that he had no personal knowledge of a number of the savings and loan association checks to Congressman Johnson and he thought that Congressman Johnson had actually received from $6,000 to $7500 and Mr. Robinson never mentioned any agreed legal fee of $25,000 prior to his testimony here.

Yet, once again in their testimony, Members of the Jury, [1322] both Mr. Robinson and Congressman Boykin adopted the Johnson line and testified substantially the same as Congressman Johnson had done about this meeting.

In fact, Members of the Jury, money was just doled out to Congressman Johnson from May through October of 1961. Savings and Loan Association checks, William L. Robinson's personal checks, a check allegedly for rental of the Snow Hill office owned by Congressman Johnson and some $3,000 in traveler's checks, and I ask you this, Members of the Jury, if those Traveler's checks were bona fide payment for bona fide legal services, why did Congressman Johnson deny to Mr. Estabrook in London that he had ever received them and why did he call Mr. Estabrook back ten hours later and change his story and then tell him that he had, in fact, paid for the $3,000

in traveler's checks? Both stories, Members of the Jury, were untrue. Why, if the truth about those traveler's checks could not have hurt Congressman Johnson, why did he lie about them to Mr. Estabrook?

Now, the Government does not mean to suggest, Members of the Jury, that there was no meeting between these four defendants on May 2, 1961 in the office of Congressman Johnson, nor do we mean to suggest that there was no discussion at that meeting among these four defendants about substantial consideration or remuneration being paid to Congressman Johnson.

But, Members of the Jury, ask yourselves, if that discussion was not in fact in the context of Congressman Johnson's continued efforts as a Congressman along with Congressman Boykin, who had arranged his satisfactory agreement the weekend before to continue their efforts with the Department of Justice in an effort to persuade the Department of Justice to dismiss the case which was then pending against Mr. Edlin? Is it not significant that Congressman Boykin was present at that meeting when the question of an alleged legal fee was discussed between Mr. Johnson and Mr. Edlin?

[1323] Now, with respect to the defense which has been presented of legal services done by Congressman Johnson, the Government wishes to be fair, Members of the Jury, it does not suggest to you that Congressman Johnson did no legal work whatsoever. But we do submit that the only legal work of any substance or consequence in which Congressman Johnson actually took a part as a lawyer was the negotiation with Mr. Boykin, Mr. Lykes Boykin for a period of approximately one week from July 10 to July 17, 1961, durig the period of time when an agreement was finally reached with Mr. Desser and Mr. Desser's interest in the Charles County land was purchased for $225,000.

I submit to you that from his testimony on the stand that was the only legal matter about which Congressman Johnson testified with any assurance or any real indication that he had actually been involved in the matter at the time it was in fact going on.

In fact, this was the only significant work done by Congressman Johnson as a lawyer which was corroborated by any witness other than Congressman Johnson and Mr. Robinson.

Even then, Congressman Johnson did not begin this matter nor did he end it but he came in in the middle for purposes of

appearance. And, significantly, Members of the Jury, during that very month of July, Congressman Johnson received no checks from Mr. Edlin or his interests and during that month of July, he made no visits to the Department of Justice.

I ask you to consider, Members of the Jury, whether there was anything arm's length in the transactions and negotiations which took place between the two land companies and the two savings and loan associations.

All four of these were controlled by Mr. Edlin. Mr. Edlin was all four and I submit to you that both of these Congressmen knew that to be a fact.

Congressman Johnson claimed to you that he was [1324] bothered sometime in August of 1961 by so-called undisclosed principals in the Charles County Land Company and the Leisure City Land Company. But, of course, Members of the Jury, it did not bother him enough for him to sever his relationship with Mr. J. Kenneth Edlin or for him to stop accepting money from Mr. Edlin up to October 23, 1961, the day on which he made his last contact with the Department of Justice and I submit to you that it is clear from Congressman Boykin's letters to Mr. Holland and Mr. Pharr in Alabama that he knew that the only principal of the two land companies was Mr. J. Kenneth Edlin.

Ladies and gentlemen of the Jury, he knew very clearly that Mr. Edlin was the man with whom he was dealing.

Now, Mr. Edlin gave Congressman Boykin more than $250,000 in cash on April 29, 1961. Mr. Edlin also signed an agreement binding his two savings and loan associations to spend a total of three and a half million dollars to develop Congressman Boykin's two tracts of land, under terms so favorable that no mortgage banker has ever heard of such terms.

You recall the testimony here of Mr. Buttner of Baltimore and of Mr. Oliver Walker and Mr. George De Franceaux of Washington. Regardless of what the value of the tracts of land was at the time, spending three and a half million dollars to prepare the tracts for development to overcome the serious problems of sewage and of drainage and of water, would have made the land substantially more valuable. And this built-in financing also made the land valuable. And even then after binding his associations, committing them to pump three and a half million dollars into these two tracts of land, Mr. Edlin still agreed to pay Congressman Boykin and Congressman

Johnson a very large commission if he, Mr. Edlin, could in fact, sell the lands to other parties.

This, of course, was an additional inducement for the two Congressmen to make the concerted effort which they did in Mr. Edlin's behalf before the Department of Justice.

[1325] Now, Members of the Jury, the testimony which was produced on behalf of the defendant Boykin relating to the Finneran sale and the value of the two tracts, the Government submits was nothing more than a smoke screen. It was immaterial and irrelevant to the real issues in this case.

Let us take a look for a moment at this defense. Mr. Finneran was not a local man with the knowledge of the real estate and real estate values in this area such as was possessed by Mr. Buttner and Mr. Walker and Mr. De Franceaux, all of whom turned down loan proposals for this Charles County land. There is no testimony that Mr. Finneran had an appraisal made of this property before he purchased it from Mr. Edlin in December of 1961. What he was buying, Members of the Jury, was the built-in financing. The fantastic financing terms promised by Mr. Edlin for development.

Mr. Finneran paid a fancy price, if you will, but with little real risk and little liability, and remember that he paid less money down for both of these properties than Mr. Edlin had paid Congressman Boykin for each one of them.

Now, Mr. Edlin's promised development loan financing with its fantastic terms was worth approximately $6 million because, when those funds became unavailable, Members of the Jury, at the time First Continental and First Colony went into receivership, Mr. Finneran was able to cut Mr. Edlin's price down by almost $6 million.

You will recall that after acquiring this property, Mr. Finneran took nearly one year to obtain any other funds in order for him to develop this property and finally, in December of 1962, the Kirkeby-Natus Corporation in New York agreed to lend money but only on the most stringent terms and on terms under which Kirkeby-Natus could not lose. They agreed to loan $2 million but they agreed on an origination fee or an initial payment of $400,000—an origination fee of 20 per cent which none of the mortgage [1326] bankers who testified here in this case say they have ever heard of. And that indicates an extremely high risk was involved.

Then Mr. Finneran had to pay off the savings and loan associations and Congressman Boykin had to subordinate his entire purchase money mortgage on the Charles County tract. This Congressman Boykin was then willing to do, Members of the Jury. Because, by that time he was under indictment in this case. Congressman Boykin needed Mr. Finneran in the picture in order that he might have some straw on which to construct a defense.

Is it not strange, Members of the Jury, that for a full year prior to his indictment there was not a whisper in this case of his willingness to subordinate his purchase money mortgage but after his indictment, he was then willing to subordinate in order that the savings and loan associations from whom he had received $250,000 in cash, could be paid off?

And then once Congressman Boykin was willing to subordinate, the Kirkeby-Natus Corporation took a first mortgage on the entire tract of land and yet they were still not satisfied; they were not satisfied with the security which that land offered. They required, before that loan was made, that three millionaires would personally guarantee that loan in the total amount of $2,400,000 to the extent of $800,000 apiece. Personal guarantees.

But even so, the immateriality of all of this as a defense becomes apparent when you look, as we have done earlier in my presentation, at the circumstances which existed and the situation in which Congressman Boykin found himself in early 1961, prior to the time when Congressman Boykin and Congressman Johnson went to the Department of Justice, not in December of 1961, not in 1962, and not in 1963.

So, it was that sometime in early 1961 both Congressman Boykin and Congressman Johnson agreed with Mr. Edlin, [1327] and Mr. Robinson to use their Congressional influence to seek a review by the Department of Justice of the First Colony case. Although they may have talked in terms of review when they went to the Department of Justice, the Government submits that it is quite clear that all four of these defendants expected and anticipated that such a review at the request of two Congressmen of the United States would result in a dismissal of that indictment. Is that not clear from the testimony of Mr. T. Lamar Caudle, who said he was an old friend of Congressman Boykin? He testified, Members of the Jury, about a meeting either in January or February of 1961.

Q. What, if anything took place when you first met Congressman Johnson?—A. There was discussion in the presence of Mr. Edlin and Mr. Robinson about the indictment that involved Mr. Edlin's sister, First Colony Savings and Loan Association and Mr. Jackson Rains.

Q. All right. You were starting to say what you explained to Congressman Johnson at that meeting.—A. I explained to Congressman Johnson that an indictment was an instrument where the Grand Jury found probable cause to allegations of some violation of the Federal Law or a State law. For that matter, and that it was extremely difficult and very hard unless it could be overwhelmingly shown that the Government was in error, to have the indictment once, it was returned, dismissed. That it was very rarely ever when I was associated with the Department of Justice that an indictment was dismissed. But indictments were dismissed when it was conclusively shown that the Government was in error by its own attorneys and they were dismissed.

Q. What, if anything, did Congressman Johnson say when you advised him of that?—A. Congressman Johnson from my conversations with him—we did not go into the merits at that time but he was very much familiar with the subject. I had been with the subject off and on.

And is it not clear, Members of the Jury, that they were [1328] before the Department of Justice to seek a dismissal from the testimony which Congressman Boykin gave, when he appeared before the Federal Grand Jury, when he made his reference to the "Hoffa Swap," the question: "Congressman Boykin"—that is to Congressman Boykin before the Federal Grand Jury, was:

What did Mr. Edlin and Mr. Robinson hope would be accomplished by the Attorney General and the Department of Justice taking the case under advisement and studying it?

A. They were trying to swap off Hoffa for that deal.

I submit to you that what he was talking about was that this Hoffa story was bait to be dangled before the Attorney General of the United States in the hope that that bait would convince the Department of Justice that, in return for Mr.

Edlin's cooperation, they would swap and agree to dismiss this indictment.

Is it not clear, also, from Government Exhibit 86—this bulky synopsis of the entire indictment which was presented by Congressman Johnson to the Attorney General of the United States in March of 1961, is it not clear from that exhibit that what they sought was a dismissal of this indictment, and is it not clear, also, from the allegations which these two Congressmen made to the Department of Justice that the indictment was faulty, that the case had no merit, that the case was motivated by a disgruntled employee, a Mr. Bridges, whom I might add, was so indicted also in that case? Is that not clear, from Congressman Boykin's and Congressman Johnson's concern over Mr. Edlin's prior criminal record and is that not clear from the testimony of the Attorney General of the United States when he testified, he stated, Members of the Jury, on cross examination:

> I reached the clear conclusion that what you wanted to accomplish was the dismissal of the indictment.

[1329] And on the following page he said, "These meetings that occurred were for the purpose of dismissing the indictment against Mr. Edlin."

And you recall his answer to Congressman Johnson who was then cross examining, "Well, Congressman, can you tell me why you were so anxious to come in there and have us review it if you did not want us to dismiss it?"

You will also recall that Congressman Johnson asked for review after review. When one review showed that the case would proceed, he asked for another review. In short, Members of the Jury, is it not clear from all of the testimony in this case that the two Congressmen sought to have the case against Mr. Edlin and First Colony and the others dismissed by the Department of Justice?

The plans to go to the Attorney General began at least in February 1961. There were meetings in which Mr. Caudle participated involving these four defendants.

Then in early March of 1961 Mr. Robinson addressed a letter to Congressman Johnson in Washington on March 1, 1961, Defendant Johnson exhibit 69, Members of the Jury, in which he invited Congressman Johnson to come to Miami during which time "I would very much like the opportunity to discuss with you several of the loans which we are now considering."

I submit to you that that letter did not represent the true facts. I submit to you that there were no loan matters discussed in Miami. But that Congressman Johnson went to Miami at that time to discuss with Mr. Robinson and assist in the preparation of a memorandum which related to Mr. Bridges material which was subsequently used in the memorandum which was, in fact, submitted to the Attorney General of the United States.

Congressman Johnson was in Miami the day after this letter was received by him. He testified that he worked with Mr. Robinson on a memorandum regarding Mr. Bridges and regarding the First Colony indictment.

[1330] Congressman Johnson, though, had told the Federal Grand Jury under oath when he appeared before that body that the only work he did in Miami related to certain unidentified loans to certain unidentified people. He denied before the Grand Jury any work in Miami on that occasion on the memorandum relating to Mr. Edlin or First Colony or the indictment; and yet he has testified here that he did work on the Bridges memorandum and has made no mention in his testimony here of any loan work while he was in Miami.

I submit to you that that admission by Congressman Johnson in this case made possible only because the Government had proved it in its direct case and that Congressman Johnson did not know when he appeared before the Federal Grand Jury that the Government had been able to obtain a copy—a photostatic copy of a letter which appeared in the files of the First Continental Savings and Loan Association, in which Mr. Robinson wrote to Congressman Johnson on March 8, 1961, and referred to the Bridges memorandum and the discussion they had had in Miami and referred to the fact that he was expecting Congressman Johnson to redraft the memorandum which Mr. Robinson had delivered to Congressman Johnson in Miami.

It was only because we found this carbon copy of this letter in the files of the First Continental Savings and Loan Association that the truth of that March meeting in Miami is known to this jury, and I submit to you that Congressman Johnson who said he did not have the original of this letter which was sent to him, in fact, destroyed that letter and the enclosures which came with it once he knew he was under investigation in this case and I ask you to consider whether that is not indicative, Members of the Jury, of his guilt?

It was about this time in early March of 1961 that Congressman Boykin talked to the Attorney General for the first time about so-called "Hoffa matter," the Dranow matter.

[1331] I submit that he was thinking then of the Hoffa swap and he subsequently delivered a memorandum to Mr. Sheridan of the Department of Justice on March 17, 1961.

I invite you to consider, Members of the Jury, what purpose Mr. Edlin thought it would serve to tell Congressman Boykin of this Hoffa-Dranow matter unless it was to be used as bait to hold out to the Department of Justice? What other logical explanation is there for the fact that Mr. Edlin told Congressman Boykin of this particular fact?

Then, in March, 1961 Congressman Johnson knew that a full memorandum would be necessary to present when he and Congressman Boykin went to see the Attorney General. He suggested that Mr. Robinson and Mr. Caudle prepare such a memorandum. This was carefully planned prior to the time they went to see the Attorney General because they knew the Attorney General would ask for such a memorandum once two Congressmen came to his office and made the charges and allegations which they did. Thus it was that Mr. Caudle and Mr. Robinson went to Miami from March 18 to March 22, 1961 to prepare the memorandum which was later delivered to the Department of Justice.

Prior to his testimony in this case, particularly before the Federal Grand Jury, Congressman Johnson denied that he knew that that memorandum had in fact been prepared before March 25, the day of his first visit to the Attorney General, Robert Kennedy.

He tried before the Federal Grand Jury, according to the testimony which was brought out on his cross examination, to disclaim as much knowledge of that memorandum and as much responsibility of that memorandum as he could and I submit to you that this was because he knew that what he was doing was in violation of the law and that he thus sought to distort the true facts.

Here, again, Congressman Johnson did not realize until the Government had put its direct case on, that we had obtained copies of three letters in a series in March 20, 21 and 22, of 1961. from Mr. Robinson to Congressman John-[1332]son enclosing portions of that memorandum sent directly to Congress-

man Johnson from Maimi; as they were hot off the press, they were sent right up to Congressman Johnson for his examination and because carbon copies of these three letters were obtained in the files of the First Continental Savings and Loan Association, the true facts of this are now known to this jury.

I submit to you that with respect to the originals of these documents, also, Members of the Jury, Congressman Johnson destroyed those letters when he knew that he was under investigation and I ask you to consider the motive or the reason for so doing.

The memorandum which Mr. Caudle and Mr. Robinson were working on in Miami and sending portions of that to Congressman Johnson was completed by March 22, 1961 and on that day Congressman Boykin called the Attorney General for the first appointment.

Then there again a series of visits and phone calls and letters were had that continued to flow so far as Congressman Johnson was concerned, until the day he received his last payoff on October 23, 1961, of $3,000 in Traveler's Checks, and continued in so far as Congressman Boykin was concerned up until the time he made several last ditch telephone calls from Mobile, in the months of November and December.

Together the two Congressmen jointly visited the Department of Justice ten times, twice to see the Attorney General, eight times to see the Assistant Attorney General, Mr. Miller; Congressman Johnson visited Mr. Miller alone three times, and the Attorney General once.

Congressman Boykin made two visits by himself to see the Attorney General, a total of sixteen separate visits, ten times or ten occasions of which the two were together.

In addition, the two Congressmen made countless telephone calls to the Department of Justice which you will [1333] recall are all set forth in these two memorandums which were admitted into evidence, the record of the Attorney General's office and the record of Mr. Miller's office of the innumerable contacts which were made with their respective offices.

Congressman Johnson also then sent memorandums which I have referred to and, Congressman Boykin himself wrote five letters either to the Attorney General or to Mr. Miller.

I ask if you do not recall the testimony of the Attorney General of the United States who, on cross examination, stated:

> I do not think that since I have been Attorney General I have had the number of visits and the amount of effort that was displayed in this case.

All the while Congressman Johnson and Congressman Boykin kept Mr. Edlin and Mr. Robinson fully advised, solicited their aid and assistance and planned and plotted with them each step of their respective approaches to the Department of Justice.

I think you will recall now the uncontradicted testimony of Mr. Jackson Rains as to one such meeting which he placed in August of 1961 and which I think you will recall tied in with Congressman Johnson's visit to see Mr. Miller on August 24, 1961, at which time there was a lengthy discussion of the merits of the indictment.

Mr. Rains testified as to a meeting which the Government submits occurred shortly after August 24.

> There was a discussion between Congressman Johnson and Congressman Boykin as to the best approach to Attorney General Robert Kennedy.

Then on behalf of Mr. Edlin and the others under indictment to have the indictment dismissed, he stated what he intended to say, that Mr. Edlin was an honest man.

> [1334] Q. Who is he?—A. Congressman Johnson. That Mr. Edlin was an honest man engaged in an honest effort. He had not intended to defraud any one and that the indictment should be dismissed.
>
> Q. Was there any conversation as to whether they had been to see the Attorney General before that meeting that you were at?—A. I do not recall that. The main conversation was whether or not the two Congressmen would go to see the Attorney General together or separately.
>
> Q. What, if anything, did Mr. Edlin say?—A. Mr. Edlin did not say much but toward the end he stated words to the effect "I have had it. How can I do a job on the land development unless you get this money off my back?"

You recall that Congressman Boykin told the Federal Grand Jury that he boosted the Congressman, Congressman Johnson all that he could when they reported back to Mr. Edlin and Mr. Robinson in order that Congressman Johnson could get

money for his services as a Congressman before the Department of Justice.

Congressman Boykin sent Mr. Edlin copies of letters which he had written to officials in the Department of Justice. He sent copies of those letters to Mr. Edlin. He even sent to Mr. Edlin original letters which he had received in reply from the Attorney General of the United States, from Mr. Miller, and very clearly stated on the top of that letter: "Send to Mr. Kenneth Edlin."

He was showing Mr. Edlin that he was working for him. That he was doing his best and this was concrete evidence of what he was doing before the Department of Justice and what his progress was with their officials.

Now, despite the present protestations, Members of the Jury, from the witness stand of both Congressman Johnson and Congressman Boykin that each advised the Attorney General and the Assistant Attorney General of Con-[1335]gressman Boykin's personal financial interest in the Charles County land and the Congressman Boykin—that Congressman Johnson was acting as counsel for First Continental and First Colony, Charles County and Leisure City—despite their claims on the stand, the Government submits to you that the evidence is clear that such are not the facts.

The Attorney General testified that he had no recollection of any disclosure of Congressman Boykin's financial interests and he was quite positive that Congressman Johnson's alleged status as counsel for anyone or any corporation was never disclosed.

These two Congressmen were not going simply as a land owner and as an attorney, Members of the Jury, both were wearing their Congressional cloaks. If they had any other status when they were before the Department of Justice, they concealed it under their Congressional cloaks. That is one aspect, Members of the Jury, of the type of misrepresentation and fraud which was perpetrated by these men in their relationship with the officials of the Department of Justice.

Congressman Johnson, when he wrote letters to the Department of Justice, never signed those letters, Members of the Jury, as Attorney for anyone or any corporation. He wrote them on the stationery of the Congress of the United States and he signed those letters as Thomas F. Johnson, Member of Congress.

When he submitted a memorandum to the Department of Justice, he did not submit it as Attorney for anyone. He submitted it and signed it as Thomas F. Johnson, Member of Congress. When Congressman Boykin wrote to Mr. Miller and to Mr. Kennedy, he did not sign it in any other capacity except as Frank W. Boykin, Member of Congress.

You will recall also Mr. Caudle's testimony that Congressman Boykin and Congressman Johnson decided before their first visit to the Attorney General to take this matter to the level of the Attorney General for the very reason that they were Congressmen of the United States.

[1336] And Congressman Johnson, himself, prior to his testimony on direct examination in this case consistently denied that he had ever represented First Colony Savings and Loan Association or First Continental Savings and Loan Association and he consistently insisted that when he went to the Department of Justice, he made it quite clear to the Attorney General and to Mr. Miller that he and Congressman Boykin were not there in the interest of any litigant.

His testimony in that regard, Members of the Jury, is quite specific. In his initial prepared statement to the FBI he stated that, referring to his first meeting with the Attorney General on March 25, 1961.

> At this meeting it was made clear to the Attorney General that Congressman Boykin and I were not there in the interest of any litigant.

And when he testified before the Federal Grand Jury he stated:

> I do want to make it clear that I told the Attorney General at that point that Congressman Boykin and I want to make it clear that we were not there in the interest of any litigant.

And he testified further as to his first meeting with Mr. Miller at the very same time:

> At the very first meeting with Mr. Miller, I told him that I wanted it distinctly understood that we were not there in the interest of any litigant. And did not want to interfere in any way with the conduct of his office.

Now, Members of the Jury, how can Congressman Johnson seriously insist or contend that he advised the high officials

of the Department of Justice of his alleged representation of the First Colony Savings and Loan Association, come before those officials and seek a review of a case in which First Colony was a defendant all the time insist-[1337]ing to those high officials that he was not appearing there in the interest of any litigant.

Yet, Members of the Jury, the Government submits that the truth is that both Congressman Johnson and Congressman Boykin were at the Department of Justice in Mr. Edlin's interest and the interest of First Colony Savings and Loan Association with respect to this indictment which was then pending but that they were there as paid Congressmen, Congressmen of the United States who had been paid to go before the Department of Justice in Mr. Edlin's behalf?

Again this is another aspect of the misrepresentation, of the deceit which these Congressmen sought to perpetrate on the Department of Justice, and the fact, Members of the Jury, that Congressman Boykin and Congressman Johnson made it clear as Congressman Johnson stated in his grand jury testimony and in his initial prepared statement, the fact that he made it clear that they were not there in the interest of any litigant, also makes it clear that their purpose in being there was to be there as Congressmen, as impartial public servants, rather than as a private citizen and a lawyer, who had personal and pecuniary interest in the matters which they discussed with the officials of the Department of Justice.

I refer once again to the testimony of the Attorney General who testified that:

> They came, in my judgment and they were there as Congressmen of the United States.

And who testified later.

> But I would say that neither Congressman Boykin nor Congressman Johnson ever said to me that this was a personal matter as they entered the room or in any other visitation did they mention to me that this was other than in their capacity as Congressmen.

And the arguments, Members of the Jury, which they presented to the Department of Justice were Congressional arguments.

[1338] They argued that there had been some sort of prejudice on the part of various Federal officials in bringing this indictment against Mr. Edlin.

They mentioned the Federal Housing Administration as being prejudiced. They mentioned the Post Office Department. They brought to the attention of the Attorney General the alleged prejudice on the part of certain Federally insured savings and loan people, the so-called Vendetta; they brought to the attention of the Attorney General an interest as Congressmen in the prosecution of James Hoffa, a matter which Congressman Boykin correctly characterized as a proposed "swap."

Mr. Edlin's and Mr. Robinson's cooperation in the Dranow matter was conceived by these defendants as good bait which they might arrange to swap for favorable consideration. They brought to the attention of the Department of Justice unemployment problems and urged those officials that a successful development assisted by Mr. J. Kenneth Edlin would be of economic benefit to Congressman Johnson's district and to the State of Maryland.

Finally, Congressman Boykin's letters, Members of the Jury, to the Attorney General and to Mr. Miller, in striking contrast with those which were written to Mr. Pharr and to Mr. Henry Holland in Alabama, indicate clearly that Congressman Boykin never disclosed his personal interest.

As an example, I refer you to Government exhibit 122–A, the letter which Congressman Boykin wrote to Mr. Kennedy on November 6, 1961, a copy of which was sent to Mr. Miller in which he stated on page 4, Members of the Jury, so you can see the facts. "These people that Edlin was agent for sold this property for over $10 million more than they paid for it. Think of the great profit the people in these building and loan companies make out of this loan. I know what I am talking about because Colonel Albert Ernest, one of my associates, sold this property to the Charles County Land Company and the Leisure Land Company for about $10 [1339] million" and I point out to you right there that Congressman Boykin knew all along that the ownership of the Stafford County tract which was purchased by Leisure City Land Corporation was not in Mr. Ernest's name. It was in the name of Tensaw Land and Timber Company and he was misrepresenting the facts as to that right there in his letter to the Department of Justice.

One thing above all in this context is clear, I submit, and that is that Congressman Johnson never went to the Department of Justice as an attorney with regard to the criminal case. Con-

gressman Johnson had never entered his appearance as Attorney of Record in the case by filing such an appearance with the clerk of this court. This was proved by the Court records and by the testimony of the Court Clerk, Mr. Butschky, and I believe this is undisputed.

Secondly, I submit that Congressman Johnson appeared as a Congressman before the Department of Justice, not in the role of an attorney in a criminal case. Based on all of these matters which I have just reviewed, the Government submits that it has proved beyond any doubt that the service which Congressman Johnson rendered to the Department of Justice was the service of a Congressman of the United States, not that of an attorney in a criminal case.

Congressman Johnson has never claimed to have been acting as attorney in the criminal case. He knew there were attorneys for all the defendants in that case. This was apparent when Congressman Johnson cross examined both Mr. Miller and Mr. Kennedy and it was clear from Congressman Johnson's own testimony in this case.

Furthermore, no one told G. C. A. Anderson or Mr. Paul Berman who were the attorneys for Mr. Edlin and First Colony in the criminal case that Congressman Johnson and Congressman Boykin were making visits to the Department of Justice. I am sure you recall, Members of the Jury, Mr. Robinson's testimony, that no one told Mr. [1340] Berman, and you recall the testimony of Mr. G. C. A. Anderson when he testified:

> As a matter of fact, Mr. Anderson, you were never consulted in March of 1961 whether or not it would be wise in the defense of Mr. Edlin to present a synopsis of your defense to the Department of Justice, were you? —A. No, I want to be sure I am right about this. Read that back to me.

[The question was read.]

> No, I was not.
>
> Q. You were never consulted in March of 1961 about any visits which two Congressmen were going to make to the Department of Justice in behalf of your client, were you?—A. I was not.
>
> Q. As a matter of fact, Mr. Anderson, you did not request a meeting with Assistant Attorney General Miller on September 8, you were called by Mr. Edlin at 9 o'clock the evening before and advised that someone

had made an appointment for your to see Mr. Miller the following day, is that not correct?—A. Well, I do not know exactly what time it was but I was called the evening before. I remember I was in bed reading. Why I should remember, I do not know. He asked me if I would go to see Mr. Miller the next day. He said I had an appointment with Mr. Miller. I do not know who made the appointment but I protested originally at going.

Since I represented him and he said an appointment had been made, I did go.

You will also recall the testimony that it was Congressman Boykin who set up an appointment for Mr. Anderson to confer with Mr. Miller.

I submit to you that there was misrepresentation, concealment, fraud and deceit in the appearances made by these two Congressmen to the representatives of the De-[1341]partment of Justice. I submit that they were coming as Congressmen concealing their true personal interest, their true financial interest. They misrepresented the status of the Desser & Garfield negotiations in a memorandum, a short two page memorandum which was sent with covering letter by Congressman Johnson—this bulky exhibit 86 in March of 1961. They told the Department of Justice——

The COURT. Mr. Marion, it is five minutes of one. If you are going to be able to finish within fifteen minutes, I think it would be well to go ahead if you can finish by 1:10. If you can't finish by 1:10, I think you should find a good stopping point.

Mr. MARION. Perhaps it would be better to break. I do not know just how long it will take and I would not want to go past.

Mr. TYDINGS. Let us break, Your Honor.

The COURT. I would rather if you can finish, even by quarter past, I think it is better to give the defendant who will follow you an opportunity to have lunch time to think over the entire speech.

If you think you can finish in twenty minutes, I think that you should try to do so. Let us go on for another ten minutes at any rate and see how near you are. Is that agreeable to the jury?

Go ahead.

Mr. MARION. They claimed in that memorandum, Members of the Jury, for obvious reasons that it was the First Colony Savings and Loan Association, the indicted institution which was the proposed lender of funds to Desser & Garfield in connection with the Charles County Development when in fact, they knew at this time that the principal proposed lender was the First Continental Savings and Loan Association.

I submit to you also that their failure to disclose to the officials of the Department of Justice their receipt of [1342] substantial financial consideration in connection with the very matter about which they were appearing before the Department of Justice constituted a fraud and a deceit and their failure to disclose the promises which had been made to them of additional commissions in the event Mr. Edlin could sell these two tracts to any of several developers, a prospect which appeared directly affected by the pending First Colony indictment.

I submit to you that Congressman Johnson was in fact willing to deceive the Federal Bureau of Investigation when he submitted to the Federal Bureau of Investigation this letter dated August 25, 1960. When he submitted to the Federal Bureau of Investigation these two letters of May 22 and October 16, 1961. I submit to you, Members of the Jury, that these were hastily prepared carbon copies of letters solely for the purpose of indicating the facts contained in the text of these two letters. Look at each of the letters, if you will and examine them. You will see that the date at the top of each letter, the number 1 is not typed by an experienced typist such as Congressman Johnson had employed in his Congressional office.

The ones are capital "I's" instead of being 1's, and both of them are the same way. Both of them are identical in that obvious typing error and both of them completely self-serving from Congressman Johnson's standpoint.

Attempting to show that the money he was getting was supposed to be coming from Escrow accounts, and I submit to you that both of these letters were prepared at exactly the same time and they were prepared well after the date of the last letter, October 16, 1961.

I submit that these letters were deceptive and were given to the FBI for the purpose of indicating facts which did not exhibit and I think it is significant, Members of the Jury, that

these two letters are the only evidence which even tend to indicate that Congressman Johnson wrote to Mr. Robinson in the entire year of 1961 and when we chal-[1343]lenge these letters, Members of the Jury, you will recall that neither Congressman Johnson could produce or would produce the original carbon copy of it, of either one of these letters, nor did Mr. Robinson produce when he took the stand what would have purported to be the original to him of each of these letters.

I submit that Congressman Johnson was willing to deceive the FBI when he submitted this document, a hand-written note from Mr. Robinson, to indicate apparently that it was written on October 25, 1961 when it in truth was written when he returned in December or in early January after his trip abroad when he knew that he was under investigation.

Likewise the letter of December 28, Members of the Jury, to Ashby, which enclosed a check bearing the same date, but which was in fact mailed on January 8, 1962 after Congressman Johnson knew he was under investigation.

I submit to you that he realized then that he had better do something to explain to them these checks he had gotten and he figured that the best way at that time, even though a personal sacrifice financially to himself, was to send off $4,400 to Mr. Ashby as quickly as he could. He back dated the letter even though he tried to tell you it was typed and dictated on the 23rd of December and dated ahead to December 28.

I submit that this letter was written in 1962, shortly before it was mailed on January 8, 1962, from Baltimore, and I submit to you further, Members of the Jury, that Congressman Johnson was willing to deceive the Grand Jury before which he appeared and testified under oath. His testimony before the Grand Jury, the Federal Grand Jury, was in startling contrast as you heard from the witness stand when he was cross examined, to the testimony which he gave on direct examination at this trial, and I submit to you that Congressman Johnson even was willing to make an effort to deceive you, the Members of this Jury, when he produced piles of documents, many of which he [1344] did not know where they had come from and on which he had scribbled penciled notations with the obvious inference of letting you conclude that those penciled notations had in fact been put on there at the time he allegedly was doing his purported legal work. And I call your attention specifically to Government Exhibit 181–A, this photostatic copy of the

purchase money mortgage on which he allegedly worked and which it was shown was doctored by handwriting after he had given a photostatic copy of this particular document to the FBI in January of 1962.

Yet, his review of his—if such were made, would have been in 1961. And I ask you Members of the Jury, what did he wish you to conclude when after the fact he wrote on this document, "Bill," obviously referring to Mr. Robinson, "Frank wants the timber exception to remain same. Find out if there is a sale timber agreement existing."

This was one of many such notations you recall, and I submit to you that by these notations he was willing to deceive this jury. And I submit to you that if he was willing to deceive this jury, and the grand jury and the Federal Bureau of Investigation, he would have been quite willing to deceive the Attorney General of the United States and to deceive the Assistant Attorney General of the United States in order to secure a dismissal of an indictment against a man who was paying him substantial sums of money.

Members of the Jury, the defendant Edlin has presented no defense in this case. He has presented no evidence to contradict the charges against him. He has produced no evidence to deny numerous statements made by many, many government witnesses. He has produced no evidence to deny the testimony of numerous witnesses of his various activities which clearly indicate beyond any doubt, Members of the Jury, his guilt of the charges in this indictment.

Congressman Boykin's defense, Members of the Jury, is or has been a subterfuge, a smoke screen, an attempt to [1345] divert the eyes of this jury from the real issues in the case. And I submit to you that if Congressman Boykin had been engaged in activities of that sort for 28 years as he testified on the stand in this case, it is high time it stopped. The activities in which he engaged in 1961, Members of the Jury, were in blatant disregard, in clear violation of the laws under which he is being prosecuted in this case.

Congressman Johnson's defense, Members of the Jury, in which Mr. Robinson assisted and testified and was an integral part, was a sham. I submit to you that it was a clearly beyond-any-doubt display of meeting the Charges of a conflict of interest by Congressman Johnson, by a conflict of testimony. He met the charge of the conspiracy to defraud the United States

by seeking to perpetrate a fraud upon you, Members of the Jury, and upon this very Court. I submit to you that Congressman Johnson's defense is wholly incredible and totally unworthy of your belief.

I invite you to ask yourselves, Members of the Jury, whether or not the activities of all four of these defendants, based upon the testimony which you have heard for the past ten and a half weeks ought not truly to be characterized as shocking.

Ladies and Gentlemen of the Jury, your obligation is to do justice to the four defendants in this case and you have an equal obligation to do justice to all of the people of the United States. We are proud of the Credo of the Department of Justice, its definition of Justice inscribed in its halls in Washington, "That the Innocent shall not suffer and that the guilty shall not escape."

The Government asks the members of the Jury that you do justice in this case.

Thank you.

* * * * *

[1346] ARGUMENT BY COUNSEL DURING POST-TRIAL PROCEEDINGS ON AUGUST 6, 1963 ON ALLEGED IMPROPER COMMENT BY PROSECUTOR IN OPENING SUMMATION

Mr. DOUB. I will pass on to the vilification of Johnson by Government counsel which we deem to be most improper and very prejudicial to Johnson.

Now, Your Honor, Mr. Marion charged Mr. Johnson with the deliberate destruction of three letters in March of 1961, from Robinson to Johnson, and with the fabrication of two letters in May and October.

The COURT. It was the fabrication of two.

Mr. DOUB. Yes.

The COURT. You said three.

Mr. DOUB. The destruction of three.

The COURT. And the fabrication. May I correct that because I looked at page ten and fabricated three dated August the twenty-fifth 1960, the middle one, there was no charge of fabrication. The middle one was used as proof that the other two were fabricated.

Mr. TYDINGS. That's right, Your Honor.

Mr. DOUB. Yes.

Now, Your Honor, these were very serious charges; they were not within the scope of the indictment, and as a matter-of-fact, just to give you an idea of what this is about, let us take the charge by the Government.

The COURT. Well, what page is that? What page of the transcript?

Mr. DOUB. Let's take the charge by the Government that Johnson destroyed these letters. Johnson had testified that he had received the letters. He testified he received the letters, so there is no issue in the case as to whether he had received them or not. If he had denied receiving them——

The COURT. What page is that? What page are you talking about?

[1347] Mr. DOUB. Mr. Marion's argument you mean?

The COURT. Yes. You gave no record reference to it.

Mr. DOUB. I have it here, Your Honor. On the question of the transcript, it's on 5885, Your Honor, and 5896.

I did not feel that was proper argument, Your Honor. The Government had plenty to talk about in this case without resorting to that, and in that connection, Your Honor, Mr. Marion made many misstatements of fact to the jury, many. With that background I call Your Honor's attention to——

The COURT. Well, I didn't notice them as they went along and you didn't call my attention to them as they went along to ask me to correct them.

I thought he made an extremely careful and accurate argument.

Mr. DOUB. Your Honor, you will recall I did move for a mistrial upon the conclusion of his argument by reason of these charges.

Now, the second statement he made on the fabrication of letters to the F.B.I., you will find it on 5912 and 5913.

Your Honor might be interested to know that in *Wilson* v. *United States* in 162 U.S. 613, 621, the Supreme Court said the destruction, suppression, or fabrication of evidence undoubtedly gives rise to a presumption of guilt to be dealt with by the jury.

Judge Learned Hand in referring to comparable statements of Wigmore said that the fabrication of evidence is strong evidence of guilt.

Now, Your Honor——

The COURT. Mr. Johnson didn't admit having received

them until after they had been proved and after they had been discovered in the file of the First Continental; isn't that right?

Mr. DOUB. Well, Your Honor, he never had a chance; he was never on the stand.

[1348] The COURT. He was before the grand jury. That is the comment that was made, the comment was made of his failing to——

Mr. TYDINGS. Yes, sir.

The COURT. In his previous——

Mr. TYDINGS. Yes.

The COURT. His previous interviews with the F.B.I.

Mr. TYDINGS. He was specifically asked about it before the grand jury.

Mr. DOUB. Well, the second point on the alleged manufacture of those two letters, Your Honor, the Government asked Johnson on cross-examination if he hadn't made up those letters, and he said no, and they had not been put in evidence in Johnson's case in chief.

The Government then showed him thermofax copies of two letters and said, "Didn't you give these to the F.B.I.?" And he said yes.

And then they said, "Isn't it a fact that they were not bona fide letters," in effect, I don't recall his exact language, and he said yes they were.

The COURT. You mean "yes, they were bona fide"?

Mr. DOUB. Yes.

The COURT. He did not admit that they were not bona fide.

Mr. DOUB. Yes. Your Honor, I couldn't object to a question like that because the objection would have been more horrible. I couldn't possibly object to it; but the Government then never followed it up. I thought perhaps the Government is going to try to show or try to offer some evidence of impropriety of what they had accumulated, but they didn't do it, and then in argument—

The COURT. Well, before argument, there is something else, Mr. Doub. I ruled that I thought that there was in-[1349]herent evidence in the letters themselves which showed that they had not been typed by the person who was purported to have typed them.

Mr. DOUB. No, Your Honor, I don't recall that.

The COURT. And I told you that right in my office one morning when you came in to ask me about it.

Mr. DOUB. Is that in your charge, Your Honor?

The COURT. No, it isn't. You came to my office one morning with those letters to get a copy of them and said something about them and said you thought it was an outrage and I told you that I thought that it was abundant evidence that they had been fabricated right in my office that morning when you came in to get them, that is, right at the time.

The Government made the argument then and they pointed out that the "i's" instead of "ones", and the whole thing.

Mr. DOUB. Yes, the whole argument, the whole argument, Your Honor.

The COURT. Yes, that's right.

Mr. DOUB. And we have submitted an affidavit of the secretary as to her conversations with Government counsel and attached them.

Now, Mr. Tydings and I, he wrote me a letter indicating that he took exception to that.

The COURT. That's right.

Mr. DOUB. And he and I are going to see if we can work out a stipulation, Your Honor, as to what are the accurate facts so that there can be no question about it.

Mr. TYDINGS. If you withdraw the affidavit.

Mr. DOUB. No.

Mr. TYDINGS. We are going to submit as part of the [1350] record by letter to you of July thirtieth and the letter which you wrote back to me, Mr. Doub.

The COURT. You want to put them in?

Mr. TYDINGS. Yes, I would like to at this time, Your Honor. First is the letter——

The COURT. Let's get it clear. I don't see any use in bringing them in here.

Mr. TYDINGS. No. I ask, Your Honor, that the letter dated July 30, 1963 from myself to Mr. George Cochran Doub with copies to Your Honor, Mr. Williams, Mr. Genn, and Mr. Robinson be offered as the Court's Hearing Exhibit at this time together with a letter dated August first from Mr. Doub to myself, with copies also to the same individuals be also marked as a Hearing Exhibit at this time.

Mr. DOUB. Your Honor, I promised Mr. Tydings and defense counsel that I would not take more than an hour. So, I am going to——

The COURT. First, do you object to these letters being introduced, Mr. Doub?

Mr. DOUB. No, indeed, Your Honor.

The COURT. All right.

The CLERK. Court Hearing Exhibits 1 and 2.

[Above-entitled letters were marked Court Hearing Exhibits 1 and 2.]

Mr. WILLIAMS. Now, Your Honor——

The COURT. May I just read this?

Mr. WILLIAMS. Yes, sir. Excuse me.

The COURT. All right.

Mr. WILLIAMS. I don't think that any of the arguments that have been made to you heretofore have become more cogent or persuasive with the passage of time, and I don't [1351] intend to repeat a lot of argumentations that you have heard before, before trial, during trial, and finally just before the case went to the jury.

I don't intend either, Your Honor, to argue matters

* * * * *

The COURT. It can't be considered as a fact unless you will swear it is a fact.

Mr. TYDINGS. We don't offer it as a fact. We merely say that we are prepared if necessary to prove it.

The COURT. How can I consider it except as argument if it is in the record in some way?

Mr. TYDINGS. Well, if you consider the affidavit——

The COURT. You can attach affidavits to motions here.

Mr. TYDINGS. But the purpose of an affidavit is to bring something to the attention of the Court to bring on a hearing where testimony can be taken and the witness cross-examined.

The COURT. All right.

Mr. TYDINGS. And we merely want to make certain that this is clear so that the Court will see this in connection with the affidavit, in connection with the letter, and that is all; so that they will see the whole picture.

The COURT. Well, now; let's see. You say when Johnson first attacked the prosecutor's argument in his motion on June 12th that he was given an opportunity to make a proffer of what Miss Fermoyle had advised him with respect to these two letters.

Is that a matter of record?

Mr. TYDINGS. Yes, sir.

Mr. DOUB. No.

The COURT. Then I think that this much of your answer [1352] ought to be supported by affidavit of somebody on the Government's side as a fact.

Mr. TYDINGS. All right.

The COURT. Except so far as they are in the record. Then I can consider your affidavit as a counter affidavit to Mr. Doub's.

Mr. TYDINGS. All right. Then we will file counter-affidavits.

The COURT. Well, what you are going to say is, just what is on page 9 and 10.

Mr. TYDINGS. That is right.

The COURT. All right, and the top two lines on 11.

Mr. TYDINGS. That is right.

The COURT. Well, you can swear to them. Who is going to make the affidavit?

Mr. TYDINGS. Mr. Weiner.

The COURT. Stand up. Are you prepared to swear to this? Have you read them?

Mr. WEINER. Yes, but I would like to read them again.

The COURT. You would like to read them again——

Mr. WEINER. Yes.

The COURT. To see if you are prepared to make an affidavit to the facts beginning at the bottom of page 9 and running to the top of page 11?

Mr. TYDINGS. Your Honor, the only objection is this, that I don't have or don't think we have to make any affidavits to begin with, and I think the way to handle it is that we have a hearing, and I don't think these should be part of the record.

The COURT. All right. Hold up your right hand and make the affidavit.

[1353] In the presence of Almighty God, do you declare that the facts set out in the Government's memorandum in opposition to the motion of all the defendants for judgment of acquittal notwithstanding the verdict or in the alternative for a new trial, beginning on the middle of page 9 and running through——

Mr. DOUB. Your Honor——

The COURT. Through the second line——

Mr. DOUB. It begins on page 10, and that is just argument.

The COURT. It begins: "When Johnson first attacked the prosecutor's argument, he was given an opportunity."

You say that is not a matter of record?

Mr. DOUB. Your Honor, can he swear to such a statement as that?

The COURT. Is it a matter of record or isn't it? I don't know.

Mr. WEINER. I think it is, Your Honor.

The COURT. If it is a matter of record, then no affidavit is necessary; if it is not a matter of record, I think it ought to be.

Mr. DOUB. What does it mean? Your Honor, there are statements here that honestly are not susceptible of being sworn to, that "he was given an opportunity."

The COURT. All right; then stop that and let's us just have that beginning at the first paragraph on page 10 and running through to the first two lines on page 11, that Mr. Weiner is swearing that the facts beginning at the first paragraph on page 10 through the second line on page 11 are true.

Mr. DOUB. Your Honor, I was wondering——

Mr. WEINER. I will so swear.

[1354] Mr. DOUB. If you would give us an opportunity to try to work out a stipulated statement of facts. There are things here that are so general that—

The COURT. What it comes down to, Mr. Doub, as I understand it, is this: This lady, who is Mr. Johnson's secretary, whom you did not call and whom the Government did not call, is not prepared to swear that she typed those letters.

I gather that the substance of it is that since her initials appear on the bottom and since she has no recollection one way or the other, in the normal course of business she would think that she did prepare them but that she has no personal recollection of having typed them.

Now, isn't that about what it comes to?

Mr. DOUB. Well, Your Honor emphasized an aspect most favorable to the Government; but the other aspect was that though she could not tell, could not say to Mr. Tydings that she had not typed them.

The COURT. I think that ought to be added into the findings of fact, and I will not make this finding of fact, that after having examined the letters, the two challenged letters and the one authentic letter along with the others, I find that there is abundant evidence inherent in the letters themselves to support the charge that they were not typed by Miss Fermoyle; and if I have to make a finding of fact I will find as a fact that they were not typed by her but that they were typed by somebody

else; and I will make the further finding that in view of all the testimony with respect to them, in view of all the letters themselves, and the inferences which may be drawn from the letters themselves, that if Miss Fermoyle testified as I have just found based upon this kind of informal agreement as to what her testimony amounted to, it would not have affected the verdict of the jury in this case and would not have had any substantial influence on the verdict of the jury on any of the counts.

* * * * *

[1355] In the United States Court of Appeals for the Fourth Circuit

No. 9223

UNITED STATES OF AMERICA, APPELLEE

v.

THOMAS F. JOHNSON, J. KENNETH EDLIN, AND WILLIAM L. ROBINSON, APPELLANTS

Appeals from the United States District Court for the District of Maryland, at Baltimore—Roszel C. Thomsen, District Judge

Argued April 16, 1964

Opinion filed and entered—September 16, 1964

Before SOBELOFF, Chief Judge, HAYNSWORTH, Circuit Judge, and BUTZNER, District Judge

George Cochran Doub (Weinberg & Green on brief) for Appellant Thomas F. Johnson; *William L. Robinson*, pro se; and *Eugene Gressman* and *Edward L. Genn* (Brown, Genn & Brown on brief) for Appellant J. Kenneth Edlin, and *J. Hardin Marion, III*, Special Assistant United States Attorney, and *Arthur L. Burnett*, Attorney, Department of Justice (*Robert W. Kernan*, First Assistant United States Attorney, and *David Ellenhorn*, Attorney, Department of Justice, on brief), for appellee.

[1356] SOBELOFF, *Chief Judge:* Two members of the United States Congress and two other persons were jointly indicted for violations of both the conspiracy statute, 18 U.S.C.A. § 371, and the conflicts of interest statute, 18 U.S.C.A.

§ 281.[1] After a jury trial the four defendants were convicted. One, Frank W. Boykin, a Representative from Alabama, paid his fine and has not appealed. This is the appeal of Representative Thomas F. Johnson of Maryland, and J. Kenneth Edlin and William L. Robinson.

The indictment was in eight counts. The first charged a conspiracy "to defraud the United States * * * (a) Of * * * its right to have * * * the official business of the Department of Justice, conducted honestly * * *. (b) Of * * * its right to have * * * personnel of the Department of Justice, free * * * of * * * unlawful, improper and undue pressure * * *. (c) Of * * * its right to have the lawful functions and duties of the defendants Thomas F. Johnson and Frank W. Boykin * * * free from corruption * * *. (d) Of * * * its right not to be deprived of the faithful, loyal and conscientious services of the defendants Thomas F. Johnson and Frank W. Boykin * * *."[2] This count alleged that as part of the conspiracy Johnson was paid to make a speech in Congress and to persuade officials of the Department of Justice to cause the postponement and eventual dismissal of a criminal action then pending against Edlin.

[1357] The remaining seven counts charged Johnson with the substantive offenses of receiving payment for representing Edlin before the Justice Department. 18 U.S.C.A. § 281. In these counts Robinson and Edlin were charged as aiders and abettors.

I. The Indictment

A. First Count—Conspiracy

The appellants attack the validity of count one on two broad fronts. First, they say that in general conspiracy indictments should not be tolerated because of the abuses which they engender. Second, they contend that this particular indictment is defective in a number of ways.

1. Alleged Invalidity of Conspiracy Indictments

The appellants' criticism of conspiracy indictments is not wholly without foundation. They are not the first to express the view. Similar statements can be found in concurring and dissenting opinions in the Supreme Court and in a number of

[1] See pre-trial opinion of District Court, *United States* v. *Johnson*, 215 F. Supp. 300 (D. Md. 1963).

[2] Paragraph 14, subparagraphs (a) to (d) of the indictment.

Law Review articles. *Krulewitch* v. *United States*, 336 U.S. 440, 445–48 (1949); *Kotteakos* v. *United States*, 328 U.S. 750, 760–74 (1946). Goldstein, "Conspiracy to Defraud the United States," 68 Yale L.J. 405 (1958). The dragnet effect of conspiracy indictments, their sometime indiscriminate use and the unfair advantage they may give to the prosecution in respect to evidence and proof are well known. While this is true, the Supreme Court has not said that conspiracy indictments as such are improper; convictions based upon them have been repeatedly upheld. The net effect of the Court's expressions of concern is an [1358] admonition to scrutinize carefully the allegations of such indictments and the proof adduced in their support.

2. *Specific Attacks on First Count*

a. *Vagueness and indefiniteness.*—The appellants insist that count one is indefinite and vague and fails to inform them of the charge alleged. Our reading of the count does not confirm this contention. The count alleges a conspiracy "to defraud the United States." Subparagraph (a) to (d) of paragraph 14, summarized above, enumerate four governmental functions and rights which are alleged to have been defrauded. It was not necessary to allege that the Government had been defrauded of money or property. Section 371 has consistently been interpreted to support an indictment charging that a lawful function of the Government has been interfered with or obstructed. *Hammerschmidt* v. *United States*, 265 U.S. 182 (1924); *Curley* v. *United States*, 130 Fed. 1 (1st Cir.), *cert. denied*, 195 U.S. 628 (1904); *Haas* v. *Henkel*, 216 U.S. 462 (1910).

Paragraphs 15 to 25 of count one state the objects and purposes of the conspiracy. Thereafter 75 overt acts are alleged. Contrary to the appellants' contentions, the indictment did not give the Government carte blanche to introduce evidence and frame any imaginable purpose of the conspiracy. In plain and concise language the paragraphs 15 to 25 effectively define the objects and delineate the proof. This is all that Rule 7(c) [3] of the Rules of Criminal [1359] Procedure requires. See *May* v. *United States*, 175 F. 2d 994 (D.C. Cir.), *cert. denied*, 333 U.S. 830 (1949); *United States* v. *Manton*, 107 F. 2d 834 (2d Cir. 1938), *cert. denied*, 309 U.S. 664 (1940).

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[3] "7(c) The indictment * * * shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. * * *"

b. *Duplicity.*—Because count one alleges both Johnson's speech *and* his discussions with members of the Justice Department, the appellants maintain that it is duplicitous. The short and, we think, sufficient answer is that the indictment charges only one conspiracy—to defraud the United States—and this is not changed by the assertion of more than one means used to accomplish the object. "The conspiracy is the crime, and that is one, however diverse its objects." *Frohwerk* v. *United States*, 249 U.S. 204, 210 (1919).[4]

c. *Alleged insufficiency of allegations charging fraud.*—We must also reject the argument that count one was fatally defective because it failed to charge any false statement, misrepresentation or deceit. In *Hammerschmidt* v. *United States*, 265 U.S. 182, 188 (1924), the Supreme Court defined the word "defraud" as used in what is now section 371:

> To conspire to defraud the United States means primarily to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, [1360] craft or trickery, *or at least by means that are dishonest* [emphasis added].

Since *Hammerschmidt*, numerous cases have held that the payment of money by a private person to an official of the Government for the performance of an official act constitutes a fraud. *United States* v. *Manton*, *supra*; *Glasser* v. *United States*, 315 U.S. 60 (1942); *May* v. *United States*, *supra*; *United States* v. *Bowles*, 183 F. Supp. 237 (S.D. Me. 1958). *Glasser* really closed the debate. There the Court, citing *Hammerschmidt*, said:

> The indictment charges that the United States was defrauded by depriving it of its lawful governmental functions by dishonest means; it is settled that this is a "defrauding" within the meaning of [section 371] of the Criminal Code. 315 U.S. at 66.

The indictment in paragraphs 15 to 25 explicitly stated that it was a part of the conspiracy for appellant Johnson to receive compensation from appellants Edlin and Robinson. Manifestly this is a "dishonest means," in the *Hammerschmidt*

[4] See also *United States* v. *Manton*, *supra*, and *May* v. *United States*, *supra*, where the same contention was raised and rejected.

phrase, and is sufficient to support an indictment under section 371.

d. *The alleged impossibility of defrauding the Justice Department.*—Appellant Edlin contends that the conspiracy count must fail because it was impossible to defraud the United States in connection with the criminal charge pending against him. His position is that it was not within the power of the Department of Justice to effectuate a postponement of the trial or a dismissal of the indictment, because that power [1361] was solely in the court. The argument is specious: It is true that the court's consent would be required to dismiss a pending charge, Rule 48(a), Fed. R. Crim. P., but in a practical sense, as the Department is in charge of the prosecution, its decision to postpone a trial, or even to abandon a case, has great, if not decisive, influence with the court.

e. *Congressional privilege.*—Appellant Johnson's principal contention is that insofar as the indictment questions his motivation in making a speech on the floor of the House, it contravenes Article I, section 6 of the Constitution.

> The Senators and Representatives shall receive a Compensation for their services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; *and for any Speech or Debate in either House, they shall not be questioned in any other Place*" (emphasis added).

This is the first case, within our knowledge, squarely raising the question whether the congressional privilege deprives a court of jurisdiction to try a member on a criminal charge of accepting money to make a speech in the House of which he is a member.

The history of the parliamentary privilege is a long and turbulent one, developed in the course of conflict between Parliament and the Crown as to the proper subjects of [1362] discussion on the floor of Parliament.[5] The Crown asserted that matters then under debate in Parliament were within the

[5] See generally May, Treatise on the Law, Privileges, Proceedings and Usage of Parliament (16th ed. 1957); Wittke, The History of English Parliamentary Privilege (Ohio State University 1921).

King's prerogative, while Parliament insisted that it was protected by the privilege. Particularly disconcerting to the Crown was Parliament's intrusion into matters affecting the succession and into questions of religion. During the reigns of both Queen Elizabeth and James I the Crown resisted Parliament's expansion of its independence. More than once, members of Parliament were committed to the Tower.[6]

The accession of Charles I brought continued conflict.[7] In 1629 three members of the House of Commons, Sir John Elliot, Denzill Holles and Benjamin Valentine, when arrested and prosecuted for libelous and seditious speeches, pleaded to the jurisdiction of the court. They maintained that they were punishable, if at all, only in Parliament. The King's Bench rejected their plea and convicted them, Judge Sir William Jones observing: "We are the judges of their lives and lands; therefore of their liberties." 3 Howell, State Trials, 296, 306. The decision was very unpopular and contributed to the eventual downfall of Charles.[8]

[1363] Immediately after the Revolution of 1688, Parliament enacted the Bill of Rights containing the following declaration: "[T]hat the freedom of speech, and debates, and proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament." Since then the privilege of speech and debate has never been questioned or denied.

The scope of the privilege is demonstrated in the English case, *Ex parte Wason*, 4 Q.B. 573 (1869). There the English court held that a conspiracy by a number of persons, including members of the House of Lords, to make false statements in the House was not an offense at law, because the courts were powerless to question the motives and intentions of members when speaking before the Parliament.

In the landmark case of *Stockdale* v. *Hansard*, 9 Adolphus & Ellis 1 (1839), Lord Denman described the privilege, by then fully developed, in these words:

> The privilege of having their debates unquestioned, though denied when the members began to speak their

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[6] Taswell-Langmead, English Constitutional History from the Teutonic Conquest to the Present Time, 249 (11th ed. 1960).

[7] Chrimes, English Constitutional History, 151–53 (2d ed. 1953).

[8] Wittke, *op. cit. supra*, n. 5.

> minds freely in the time of Queen Elizabeth, and punished in its exercise both by that princess and her two successors, was soon clearly perceived to be indispensable and universally acknowledged. By consequence, whatever is done within the walls of either assembly must pass without question in any other place. For speeches made in Parliament by a member to the prejudice of any other person, or hazardous to the public peace, that member enjoys complete impunity. For every paper signed by the speaker by order of the House, though to the last degree calumnious, or even [1364] if it brought personal suffering upon individuals, the speaker cannot be arraigned in a court of justice. But if the calumnious or inflammatory speeches should be reported and published, the law will attach responsibility on the publisher. So if the speaker by authority of the House order an illegal act, through that authority shall exempt him from question, his order shall no more justify the person who executed it than King Charles's warrant for levying ship-money could justify his revenue officer.

Early in the history of the American colonies, the privilege of speech was recognized,[9] and many of them placed it in their constitutions when they achieved independence.[10] "The provision in the United States Constitution was a reflection of political principles already firmly established in the States." *Tenney* v. *Brandhove*, 341 U.S. 367, 373 (1951).

In an 1808 Massachusetts decision by the highest court of that state,[11] subsequently characterized by the Supreme

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[9] Clarke, Parliamentary Privilege in the American Colonies, 71 (1943).

[10] See, *e.g.*, Maryland Declaration of Rights, Nov. 3, 1776 ("That freedom of speech, and debates or proceedings, in the legislature, ought not to be impeached in any other court or judicature."); Massachusetts Constitution of 1780, Art. VIII ("The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action, or complaint, in any other court or place whatsoever."); New Hampshire Constitution of 1784, Part 1, Art. XXX ("The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any action, complaint, or prosecution, in any other court or place whatsoever.").

[11] *Coffin* v. *Coffin*, 4 Mass. 1 (1808).

[1365] Court of the United States as an authoritative description of the constitutional provision, Chief Justice Parsons wrote:

> These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. I, therefore, think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate, but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature and in the execution of the office. And I would define the article as securing to every member exemption from prosecution for everything said or done by him as a representative, in the exercise of the functions of that office, without inquiring whether the exercise was regular, according to the rules of the House, or irregular and against their rules. I do not confine the member to his place in the House; and I am satisfied that there are cases in which he is entitled to this privilege when not within the walls of the representatives' chamber.

What we derive from this historical review of the congressional privilege is a firm conviction that the constitutional provision is to be interpreted liberally and not narrowly. We also conclude that the general test to be applied where the privilege is asserted is that whenever the motivation for making a speech is called into question, the [1366] privilege applies. Two leading Supreme Court opinions confirm this view.

Kilbourn v. *Thompson*,[12] decided in 1880, held, among other things, that a congressman who initiates, supports and votes for a resolution calling for the arrest of another person cannot be questioned in court in a suit for malicious prosecution. In 1951, *Tenney* v. *Brandhove*[13] confirmed *Kilbourn's* holding that the courtroom is not the proper place to question the mo-

[12] 103 U.S. 168 (1880).
[13] 341 U.S. 367 (1951).

tives of legislators where they are acting within their traditional sphere. Justice Frankfurter, speaking for the Court, said:

> *The claim of an unworthy purpose does not destroy the privilege.* Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of this Court in *Fletcher* v. *Peck*, 6 Cranch 87, 130, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned." 341 U.S. at 377 (emphasis added).

Equally broad is the textwriters' description of the [1367] privilege.[14] While none of them treats directly the question before us, the language of each is unequivocal in attributing to the constitutional provision wide and almost absolute scope.

What we have said thus far is, we think, generally accepted. The question with which we are faced is whether these general principles become inapplicable when bribery is a motivating factor for making a speech in a legislative chamber. The Australian courts have considered the effect of the privilege where criminal prosecutions were brought against legislators for taking bribes to cast their votes and held that the privilege

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[14] 1 Blackstone, Commentaries, 164 (Cooley, 4th ed. 1899); 2 Cooley, Constitutional Limitations, 929 (8th ed. 1927); Cushing, Legislative Assemblies, § 601 (2d ed. 1866) ("[I]n short, * * * the privilege in question secures the members of a legislative assembly against all prosecutions, whether civil or criminal, on account of any thing said or done by them, during the session, resulting from the nature and in the exercise of their office."); De Lome, The Constitution of England, 66 (5th ed. 1885); 2 The Works of James Wilson, 37–38 (1896); Schwartz, A Commentary on the Constitution of the United States, 104 (1963); 1 Story on the Constitution, § 866, p. 600 (3d ed. 1858) ("The next great and vital privilege is the freedom of speech and debate, without which all other privileges would be comparatively unimportant or ineffectual."); 1 Willoughby, The Constitution of the United States, § 233 (1910).

did not protect accused legislators. *Regina* v. *White*, 13 S.C.R. (N.S.W.) 332 (1875); *Rex* v. *Boston*, 33 C.L.R. 386 (1923). See also the Canadian case of *Regina* v. *Bunting*, 7 O.R. 524 (1885). These cases are not binding on us but we consider them, especially as they bear on the historic concept of the privilege.

While it is true that count one of the indictment alleges a "conspiracy to defraud the United States" and not bribery, the District Court, by citing federal and state statutes which [1368] make the acceptance of a bribe a criminal act, recognized the close relation between the two.[15] The District Judge also noted that in no instance has the constitutionality of either the federal or a state bribery statute ever been questioned. Reasoning by analogy from these statutes and the state cases decided under them—which do not, however, discuss the constitutional question—the Judge concluded that "the prosecution of a Member of Congress for receiving money from a private person for making a speech on the floor of the House would not be barred by Art. I, sec. 6, cl. 1 of the Constitution." 215 F. Supp. 300, 307 (D. Md. 1963).

Basic to the conclusion of both the District Judge and the Government is the reasoning that "[t]o hold Count One of the present indictment barred by the privilege would subvert rather than advance the purpose for which the privilege exists—*the independence of the legislator in the fulfillment of his public trust.*" 215 F. Supp. at 307 (emphasis added). It would be less than candid to deny the appeal of this reasoning, for one readily perceives a difference between fearless speech and corrupt speech, but after deliberate consideration we must reject the District Court's conclusion.

Inevitably, the indictment required an inquiry into Johnson's reason for delivering the speech, the very inquiry which the Supreme Court has explicitly declared to be beyond a court's power. *Tenney* v. *Brandhove*, 341 U.S. 367 (1951). The contents of the speech as such were not challenged. In fact the indictment attacked only the purpose [1369] for which the speech was made, *i.e.*, "to defraud the United States." To prove this, however, the speech in its entirety was introduced into evidence and was commented upon extensively by the prosecu-

[15] *United States* v. *Johnson*, 215 F. Supp. 300, 306 n. 6 (D. Md. 1963).

tion during the trial and in the closing arguments. Since Johnson could not deny making the speech it naturally became necessary for him to demonstrate that his purpose for delivering it was good. But the Supreme Court has declared in *Tenney* that "[t]he claim of an unworthy purpose does not destroy the privilege." 341 U.S. at 377. The speech was more than an incidental feature of the conspiracy charged. Fully one-half of the testimony introduced at the trial related to the speech.

Federal cases discussing the privilege have repeatedly held that the good or bad faith of the member making the speech is immaterial. Indeed this is precisely the teaching of *Tenney*. In *Cochran* v. *Couzens*, 42 F. 2d 783 (D.C. Cir.), *cert. denied*, 282 U.S. 874 (1930), for example, the complaint alleged that a Senator "[m]aliciously, wilfully, falsely and wrongfully" delivered a "scandalous, malicious and defamatory slander" in a speech on the floor of the Senate. In affirming the District Court's dismissal of the complaint, the court held that "the words forming the basis of plaintiff's action were uttered in the course of a speech in the chamber of the Senate of the United States, and were *absolutely privileged* and not subject to 'be questioned in any other place.'" 42 F. 2d at 784 (emphasis added). The court added:

> It is manifest that the framers of the Constitution were of the view that it would best serve the interests of all the people if members of the House and Senate were permitted unlimited freedom in speeches or debates. The provision to that end is, therefore, grounded [1370] on public policy, and should be liberally construed. Presumably legislators will be restrained in the exercise of such a privilege by the responsibilities of their office. Moreover, in the event of their failure in that regard, they will be subject to discipline by their colleagues. Article 1, § 5. 42 F. 2d at 784.

See also *Barsky* v. *United States*, 167 F. 2d 241 (D.C. Cir. 1948).

Couzens, we note, was a civil action, but it would be inconsistent to conclude that a corrupt speech is less within the congressional privilege when labeled a crime. It may be argued with some reason that it is not indispensable to the "independence of a legislator" to shield him from court action when he uses his office to willfully and intentionally slander another in a speech; yet, as we have seen, he cannot be called to account

in a court of law for such a willful abuse. The constitutional protection against being called upon to answer in "any other place" for a speech delivered in the House is equally impaired whether the court proceedings are criminal or civil. Indeed, fear of criminal prosecution may be the graver inhibition.

Coffin v. *Coffin*, which was quoted at length by the Supreme Court in both *Kilbourn* and *Tenney*, emphasized that the privilege belongs to the Congress and was developed for the benefit of Congress as a whole. This does not mean that a member of Congress is immune from sanction or punishment. Nor does it mean that a member may with impunity violate the law; it means only that the Constitution has clothed the House of which he is a member with the sole authority to try him. In this respect the Constitution has made the Houses of Congress independent of other [1371] departments of the Government. These bodies, the Founders thought, could be trusted to deal fairly with an accused member and at the same time do so with proper regard for their own integrity and dignity.

The broad interpretation we give to the congressional privilege does not, we believe, contravene a caveat the Supreme Court placed at the conclusion of both the *Kilbourn* and *Tenney* opinions. In its entirety, the caveat pronounced in *Kilbourn* reads:

> It is not necessary to decide here that there may not be things done, in the one House or the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible. If we could suppose the members of these bodies so far to forget their high functions and the noble instrument under which they act as to imitate the Long Parliament in the execution of the Chief Magistrate of the nation, or to follow the example of the French Assembly in assuming the function of a court for capital punishment we are not prepared to say that such an utter perversion of their powers to a criminal purpose would be screened from punishment by the constitutional provision for freedom of debate. 103 U.S. at 204-05.

From the illustrations hypothesized in the caveat, it is plain that the Court envisioned a situation so extreme that the Congress as a whole, because of its total involvement in the

corruption, was incapable of taking appropriate disciplinary action against individual members. No such situation is before us, nor does this case even remotely approximate one.

[1372] All will agree that when a congressman accepts compensation for a speech, his act is reprehensible. However, the privilege being applicable, courts are barred from exercising jurisdiction, and the duty falls upon the House of Congress to punish its offending member. It is not an unfamiliar concept to bar a conviction, regardless of how contemptible the defendant's act may be, in order to protect and preserve an important constitutional principle. This is precisely the doctrine underlying the innumerable cases involving violations of the Bill of Rights and the Fourteenth Amendment. No better examples need be cited than the recent cases of *Mapp* v. *Ohio* [16] and *Gideon* v. *Wainwright*.[17]

Judicial enforcement of the constitutional rights asserted in these two, and in similar, cases goes even further, for it often removes all possibility of punishment, while here sanctions remain unimpaired which may be imposed by the House membership.[18] If these sanctions be deemed insufficient in particular cases, the limitation comes from the Constitution.

A practical reason exists for invoking the congressional privilege, which meets the objective of the constitutional provision. The design is to promote the independence of all congressmen. To avoid restraint on free expression on the floor of either House, protection is given against the hazard [1373] and harassment of inquiry in any court. It is no answer, therefore, to say that if the accused member is innocent of accepting a bribe he has nothing to fear. A groundless charge may be sufficient to destroy him at the polls. Moreover, the process of indictment by a grand jury and inquiry in a court may itself be so devastating that an innocent congressman may well fear it.

It is interesting to note that the Supreme Court has recently used a similar approach in related areas involving potential

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[16] 367 U.S. 643 (1961).

[17] 372 U.S. 335 (1963).

[18] Art. 1, § 5, cl. 2 of the United States Constitution reads: "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."

impediments on constitutional rights. Discussing the oath condemned in *Baggett* v. *Bullitt*, U.S. , (1964, Mr. Justice White said:

> The uncertain meanings of the oaths require the oath-taker—teachers and public servants—to "steer far wider of the unlawful zone," *Speiser* v. *Randall*, 357 U.S. 513, 526, than if the boundaries of the forbidden areas were clearly marked. Those with a conscientious regard for what they solemnly swear or affirm, sensitive to the perils posed by the oath's indefinite language, avoid the risk of loss of employment, and perhaps profession, only by restricting their conduct to that which is unquestionably safe. Free speech may not be so inhibited.

Similarly in *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 278 (1964), the court said:

> Whether or not a newspaper can survive a succession of such judgments, the pall of fear and timidity imposed upon those who would give voice to public criticism is an atmosphere in which the First Amendment freedoms cannot survive.

[1374] In that case, Mr. Justice Goldberg in a concurring opinion quoted Judge Learned Hand's summary of the policies underlying the grant of immunity against liability to legislators, judges and executive officers. The same policies apply here.

> "It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again

> and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." * * * [1375] *Gregoire* v. *Biddle*, 177 F. 2d 579, 581. 376 U.S. at 302–03.

In the case of a congressman, the possibility—even the likelihood—of ultimate vindication in a court proceeding is no substitute for the guarantee held out by the Constitution.

Count one of the indictment is unconstitutional as applied to defendant Johnson. But as none of the privileges of Article I, section 6 pertain to the defendants who are not members of Congress, their attack on the first count, unlike Johnson's, is not sustained.

B. COUNTS 2 TO 8

We turn now to the remaining counts of the indictment. Counts 2 to 8 allege substantive violations of 18 U.S.C.A. § 281.[19] Each count charges that Johnson conferred with of-

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[19] Section 281 provides, in part:

"Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

ficials of the Justice Department in an attempt to secure the postponement and eventual dismissal of criminal charges pending against Edlin in Maryland, and that for these services he received compensation.

[1376] *1. Venue*

It is conceded that none of the services recited in the indictment was rendered in Maryland. The charge is that Johnson received seven checks—one for each of counts 2 to 8—and that he deposited them all in a Maryland bank. Four of the checks (counts 3 to 6) were drawn on a Maryland bank and three (counts 2, 7 and 8) on a Florida bank. The appellants contend that Maryland was not the proper district in which to try these substantive counts because the checks were delivered to Johnson in Washington, D.C., and that was where "compensation" was received.

Venue is more than a technical concept; it is a constitutional requirement. Article III, section 2, clause 3 commands that "[t]he Trial of all Crimes * * * shall be held in the State where the said Crimes shall have been committed * * *." As pointed out by Justice Frankfurter in *United States* v. *Johnson*, 323 U.S. 273, 275 (1944), the Sixth Amendment "underscore[s] the importance of this safeguard" in requiring trial "by an impartial jury of the State and district wherein the crime shall have been committed." See also *United States* v. *Cores*, 356 U.S. 405 (1958).

In the case of *Burton* v. *United States*, 196 U.S. 283 (1905), the Supreme Court had occasion to pass upon the nature of checks as compensation. The indictment in that case charged the defendant, a United States Senator, with the receipt of various checks at St. Louis, Missouri. The case was tried in the United States District Court of Missouri where the evidence showed that the checks, drawn on a St. Louis bank, were in fact delivered in Washington, D.C. The defendant contended, unsuccessfully in the District Court, that Washington, not Missouri, was the proper venue.

[1377] The Supreme Court noted that after the defendant received the checks in Washington he endorsed and deposited them in a Washington bank. After a detailed discussion of the relevant banking laws, the Court concluded that the Washington bank became the owner of the checks upon Burton's

endorsement and was not his agent for collection from the St. Louis bank. The Court then held:

> All this made a payment at Washington, and as a result there was a total lack of evidence to sustain the sixth, seventh, eighth and ninth counts of the indictment. The court should have, therefore, directed a verdict of not guilty on those counts. 196 U.S. at 304.

The case makes it clear that the place of the delivery of a check is not the sole determinative of venue. If it were, the Court's wrestling with banking laws to determine where the payment of the check occurred would have been needless and irrelevant. *United States* v. *Lotsch*, 102 F. 2d 35 (2d Cir. 1939).

Burton does not supply the answer as to venue for all of the substantive counts, but it is conclusive as to counts 3 to 6. In these counts it was alleged that Johnson received checks drawn on one Maryland bank and deposited them in another Maryland bank. Maryland banking law, unlike that in force in Washington, D.C., at the time of the *Burton* case, designates a bank in which a check is deposited, as an agent for collection only. 1 MD. CODE (1957), Art. 11 §§ 119, 121. This presents no problem as to counts 3 to 6, for the bank making final payment, *i.e.*, the drawee bank, and also the bank in which the checks were deposited were both located in the District of Maryland.

The venue for counts 2, 7 and 8 is not as clear, because in [1378] these counts the drawee bank was located in Florida, while the depositing bank was in Maryland. *Burton* did not consider the effect on venue where the depositing and paying banks are in different districts.[20]

The Government contends further that on these three counts venue in Maryland can be supported on the theory that when a check is involved, "compensation" constitutes a continuing

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[20] Justice Harlan dissented from the Court's opinion in *Burton*. He took the view that the Washington bank in which Burton deposited the check was only an agent for collection, and that the St. Louis bank, the drawee bank, was the bank making final payment. Because of this position he, unlike the other Justices, was required to consider the effect on venue where the depositing district and the payment district are different. His conclusion was that venue was properly laid in the District Court at St. Louis.

offense within the meaning of 18 U.S.C.A. § 3237 [21] and that a prosecution can be brought for a violation of section 281 either where the check was deposited or where it was paid. The proposition is well supported.

In *Benson* v. *Henkel*, 198 U.S. 1, 9 (1905), a prosecution for bribery, the indictment charged that "the defendant unlawfully *gave* to such officer, in the District of Columbia, certain sums of money, with the intent to induce him to do an act in violation of his lawful duty * * *." (Emphasis added.) The evidence showed that the defendant had mailed cash from California to the District of Columbia. The contention was that venue lay in California, where the [1379] cash was mailed, and not in Washington, where the case was tried. The Court disagreed, noting that "the case is treated as covered by sec. 731 [now 18 U.S.C.A. § 3237], providing that when an offense is begun in one District and completed in another it shall be deemed to have been committed in either, and be tried in either, as though it had been wholly committed therein."

The Government's position is that if *giving* can be considered a continuous act so too can *receiving* which is the same act viewed from the other side. We consider the analogy sound and, like the District Court, adopt it. When Johnson deposited the Florida checks in his Maryland bank for collection he started a chain of events not unlike the mailing of cash in *Benson*.[22]

We are fully advertent to certain language in the *Burton* case which, standing alone, appears to cut the other way.

> This is not a case of the commencement of a crime in one district and its completion in another, so that

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[21] 18 U.S.C.A. § 3237 reads, in pertinent part, as follows:

"(a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed."

[22] This conclusion does not conflict with Justice Harlan's dissent in *Burton*, noted in n. 20. The original prosecution against Senator Burton was brought in the district where, as Justice Harlan concluded, final payment was made on the check, *i.e.*, Missouri. Justice Harlan held this to be proper. In the instant case, had the original prosecution been brought in Florida, the situs of the drawee bank, the continuing offense statute would have supported venue there, as well as in Maryland.

> under the statute the court in either district has jurisdiction. Rev. Stat. sec. 731; 1 Comp. Stat. p. 585. There was no beginning of the offense in Missouri. The payment of the money was in Washington, and there was no commencement of that offense when the officer of the Rialto Company sent the checks [1380] from St. Louis to defendant. The latter did not thereby begin an offense in Missouri." 196 U.S. at 304.

We agree with the District Court that the above language does not negative the result we reach here. The *Henkel* and *Burton* cases were decided at the same term, and the Supreme Court in *Burton* was merely rejecting a government argument that one is guilty of receiving compensation at the moment a check is sent by the payer. In the instant case the indictment alleged, and the proof established, that Johnson both received and deposited the checks in Maryland.

We conclude, therefore, that the District of Maryland was a proper venue for the prosecution of the substantive counts, 2, 7 and 8, as well as 3 through 6.

2. Application of Section 281 to Johnson

It is the appellants' position that counts 2 to 8 fail to state an offense against Johnson because his conversations with officials of the Justice Department were in his capacity as an attorney in connection with a case pending in court. Hence they contend that section 281 covers neither Johnson as principal nor the others as aiders and abettors. The argument is hollow. Steadfastly throughout the trial Johnson maintained that he was not acting as an attorney. But even if he had maintained the contrary, the mere fact that the conversations related to a pending court proceeding would not bar a prosecution under section 281.

The purpose of section 281 is stated in *United States* v. *Adams*, 115 F. Supp. 731, 734–35 (D.N.D. 1953):

> It [section 281] was aimed at preventing Congress-[1381]men, officers and employees of the United States Government from using the weight of their positions or their influence in connection with matters which were to be determined before any department, agency, court martial, officer or commission and was to assist in insuring the integrity of such departmental determinations.

See also *United States* v. *Burton*, 202 U.S. 344, 368 (1906).

The legislative history of the predecessor to section 281 makes it clear that Congress considered and rejected a proposal to prohibit lawyer-congressmen from appearing as counsel in courts. This policy decision continues to this day, and its rationale is obvious. Governmental departments, agencies, etc., are dependent upon Congress for support, and therefore these bodies are readily susceptible to pressures from individual Senators and Representatives. Courts, on the other hand, are surrounded by protections to assure their independence. A lawyer-congressman's status and influence when he appears in open court are entirely different when he intervenes in a departmental matter. This difference was given legislative recognition.

Senator Trumbull, Chairman of the Senate Judiciary Committee when the statute was originally considered, reported to the Senate that the Committee proposed "to restrain members of Congress * * * from receiving a compensation * * * for doing any business before any Department * * * or anywhere else *except in the judicial tribunals* of the country." Cong. Globe, 38th Cong., 1st Sess. (1864), p. 555 (Emphasis added). He added:

> "This is not a bill to prevent attorneys from practis-[1382]ing in courts of law, but it is a bill to prevent Representatives and Senators in Congress * * * from receiving a compensation for advocating claims in the departments and before the bureaus of the government * * *." Cong. Globe, 38th Cong., 1st Sess. (1864), p. 561.

While Edlin in particular stresses this history, it does not support his contention. The evidence was undisputed that Johnson did not enter his appearance in the criminal case pending against Edlin. In fact, the attorney who did represent Edlin in the criminal trial was not even aware of Johnson's efforts in behalf of Edlin.

Edlin also argues that the indictment is defective because, "[t]he plain words of § 281 confine its operation to services in proceedings *pending* before any department, agency or officer of the Government. (Emphasis added). As the District Court noted, section 281 does not use the word "pending." "The

words 'before any department, agency,' etc., refer to where the services have been rendered or are to be rendered, not where the proceeding or other matter is pending." 215 F. Supp. 300, 316. The services alleged in the indictment were in relation to a matter in which the United States was a party, namely the criminal charge pending against Edlin; and the services were performed before a department, namely the Department of Justice. As noted above, the Department did have a significant role, and it had the power to take affirmative action as a result of Johnson's visits. Counts 2 to 8 of the indictment as they pertain to Johnson are sufficient. See *United States* v. *Burton*, 202 U.S. 344 (1906); *United States* v. *Quinn*, 111 F. Supp. 870 (E.D.N.Y. 1953). *Cf. United States* v. *Waldin*, 122 F. Supp. 903 (E.D. Pa. 1954); *United States* v. *Adams*, 115 F. Supp. 731 (D.N.D. 1953).

[1383] It is not necessary for us to decide whether it is permissible for a congressman who is a lawyer to represent a client, solely before a government department, in relation to his client's court case and yet not enter his appearance in court. The District Court ruled that such activity would be permissible, if the congressman-lawyer disclosed to the department that he is appearing as an attorney and not as a congressman. This conclusion is as favorable as Johnson was entitled to demand, for in the absence of such disclosure the congressman's appearance would unquestionably violate the plain words of the statute.

3. *Edlin and Robinson as Aiders and Abettors*

A further objection to the validity of the indictment is pressed by appellants Edlin and Robinson. They say that under the applicable decisions no prosecution can be sustained for aiding and abetting a violation of section 281. Decisions directly in point are in conflict. *United States* v. *Bowles*, 183 F. Supp. 237 (D. Me. 1958), supports the appellants while *May* v. *United States*, 175 F. 2d 994 (D.C. Cir. 1949), is contra, as is *United States* v. *Quinn, supra.*

Relevant, but distinguishable, is *Gebardi* v. *United States*, 287 U.S. 112 (1932), where the Supreme Court held that in a Mann Act prosecution, a woman whose participation is limited to willfully permitting another to transport her in interstate commerce for purpose of prostitution cannot be tried as

a conspirator.[23] See also *Nigro* v. *United States*, 117 F. 2d 624 (8th Cir. 1941), and *Lott* v. *United States*, 205 Fed. 28 (9th Cir. 1913).

But the indictment before us is different from those in [1384] the above cited cases, and the difference is decisive. This indictment does not charge that Robinson and Edlin aided and abetted in the completion of the offense merely as payers. It goes further. It charges them with a far more active role—"aiding, abetting, counselling, commanding, inducing and procuring." This charges conduct in *addition* to the mere payment of money necessary to complete a violation of section 281.[24]

II. Disclosure of the Grand Jury Transcript

Prior to trial, Johnson moved for the production of his grand jury testimony. He supported his motion with an affidavit setting forth his reasons. In part, the affidavit reads:

> By reason of the length of the interrogation, the intensity at times with which it was conducted and the fact that I was tired physically and mentally from my work in the House of Representatives and my vigorous campagn for reelection on the Eastern Shore, I do not recollect a considerable part of my testimony.

The District Court denied the motion.

Later, it was disclosed that the Government, before the trial, had permitted a government witness to examine the [1385] witness' grand jury testimony. The witness' attorney was accorded the same opportunity, and together they read a volume of the transcript containing the witness' testimony and the testimony of others. The appellants moved the court for the production of all the grand jury testimony on the ground that the Government had breached "the veil of secrecy" usually surrounding grand jury records. This motion also, the court denied. But the court made available to the appellants the

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[23] *Cf. United States* v. *Holte*, 236 U.S. 140 (1915).

[24] In *Bowles* the indictment apparently averred only that the alleged aiders and abettors had paid money. The court's opinion indicated no other acts of assistance. The same is true of *Nigro* and *Lott*. Because of the difference between these cases and ours, we are not required to rule on whether mere payment would be sufficient to sustain a charge of aiding and abetting.

volume of testimony revealed by the Government. We find no error in either of these rulings.

The practice of shielding grand jury proceedings from discovery is long-established and rests on sound policy.[25] *Costello* v. *United States*, 350 U.S. 359, 362 (1957); *United States* v. *Johnson*, 319 U.S. 503, 513 (1943). In recent years the Supreme Court has reaffirmed its commitment to this practice. *Pittsburgh Plate Glass Co.* v. *United States*, 360 U.S. 395 (1959) *affirming* 260 F. 2d 397 (4th Cir. 1958); *United States* v. *Procter & Gamble*, 356 U.S. 677 (1958).

Of course, where there is a particularized need for grand [1386] jury minutes, it is within the sound discretion of the district court to require their production. *Pittsburgh Plate Glass Co.* v. *United States, supra; United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 231 (1940). But it is manifest from a reading of Johnson's affidavit that he showed no particularized need. His justification for requesting his testimony is not different from that of any other defendant. If his motion were to be granted then all similar motions would have to be granted automatically regardless of any showing of particularized need. It is difficult to imagine a defendant who could remember all of his grand jury testimony, or who was not emotionally strained when giving it. No special impact on Johnson is made to appear and there is no showing of a threatened injustice from the denial.

Likewise, the fact that the Government, in preparation for the trial, disclosed a volume of the transcript to one of its witnesses does not require the complete abandonment of secrecy. Secrecy is maintained for the benefit of the grand jury and for

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[25] Perhaps the most frequently cited justification for the practice is found in *United States* v. *Rose*, 215 F. 2d 617, 628–29 (3d Cir. 1954). There the court summarized the reasons for the rule as follows:

"(1) To prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammeled disclosures by persons who have information with respect to the commission of crimes; (5) to protect innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt."

the betterment of grand jury proceedings. *United States* v. *Smyth*, 104 F. Supp. 283, 304 (N.D. Cal. 1952). Where it becomes necessary to breach the secrecy of the proceedings, it should be done "discreetly and limitedly." *United States* v. *Proctor & Gamble*, 356 U.S. 677, 683 (1958). This is what the Judge did. He repaired any possible damage to the defendants and equalized the situation by permitting them to examine the same testimony which was shown to the government witness.

III. Sufficency of the Evidence

The appellants complain that the evidence is insufficient to support the verdict. To a large extent their contentions [1387] merely repeat the arguments made in their attack on the indictment. For example, arguing the insufficiency to support a finding of a section 281 violation, Edlin reintroduces his concept of the statutes,[36] and follows through with the assertion that there was no evidence showing a violation of section 281 as he defines it.

The trial was long, extending over eleven weeks, and the record is mammoth, consisting of 41 volumes of 5,600 pages of testimony and many exhibits. We have closely examined this mass of material and have carefully considered the arguments. To restate all of the evidence here would be a useless exercise. The posture of the case, on appeal from a judgment of conviction, requires us to view the evidence in the light most favorable to the Government. For the present purpose, a condensed statement will suffice.

Appellant J. Kenneth Edlin was the dominating force in two Maryland savings and loan associations, First Colony Savings and Loan Association and First Continental Savings and Loan Association. Robinson was Edlin's associate and an officer in each of these associations. According to Martin Heflin, a public relations man, Edlin and Robinson consulted him in April, 1960, about the possibility of having a speech delivered in Congress in behalf of savings and loan institutions. Robinson made an initial draft of such a speech and sent it to Heflin who edited it and inserted the words "Mr. Speaker" at appropriate places. Heflin, however, pointed out to Robinson

[36] See section IA1, *supra*.

and Edlin that there was no reason to make the speech at that time, and that no one "could be justified in making a speech." [1388] The next month, May, 1960, Heflin, Edlin and Jackson Rains, an accountant for First Colony, met with Congressman Johnson in a Washington restaurant where they discussed the situation of Maryland savings and loan associations. Johnson asked Heflin to send him a resume of the meeting.

On June 30, 1960, Johnson delivered the speech on the floor of the House of Representatives. Johnson testified that the speech was prompted by an unfavorable newspaper article in the May 27, 1960, edition of the Washington Star, and by his own desire to create a political issue for the upcoming congressional election. The newspaper article, however, was a relatively minor one and appeared on an inside page. On cross-examination Johnson admitted that he never had any complaints from his constituents concerning the article or even about savings and loan associations in general, and that no constituent had requested him to make a speech. He also admitted that he made no mention of the speech either in his customary weekly newsletter to constituents or during his campaign.

Johnson also testified that his administrative assistant, Manual Buarque, wrote the speech with the aid of information supplied by Heflin. Buarque testified to the same effect. But other evidence cast grave doubt on the truthfulness of this testimony. Another version of the authorship of the speech came from Accountant Rains, who testified that immediately before or after the speech was delivered Edlin showed him a copy. Rains also testified that on July 4, 1960, on a plane trip from Maryland to Florida, Robinson and Edlin joked about the authorship of the speech. His testimony was:

> [1389] Everyone was in good spirits. Mr. Edlin and Mr. Robinson were sitting together and they were showing the speech back and forth and saying, jokingly, or facetiously, "How do you like the speech I wrote," and the other one would say, "What do you mean, you wrote it? I wrote it,"—and that sort of thing.

Ten days before the speech, Robinson sent Johnson a check for $500. Both men claimed at the trial that it was a campaign contribution, but the evidence showed that when the check was drawn Robinson's bank account was insufficient to cover the

sum, and that immediately thereafter he deposited a $300 check from First Colony. First Colony recorded the check as a legal expense.

First Continental Savings and Loan thereafter ordered 50,000 reprints of the speech, underlined in red at significant portions and used to attract depositors.

It is important to note here that as of 1959, Edlin, together with Rains and First Colony, were under indictment in the District Court of Maryland for mail fraud. Rains testified that when Edlin showed him the speech, he reassured him about the pending indictment. According to Rains, Edlin said "[Y]ou see, we have friends on the Hill—we have nothing to fear on our indictment. These people are interested in us and the injustice we have been done."

The testimony of Edlin's secretary, Mrs. Sadie Goldman, was significant. She testified that in the first week of June, 1960, (before the speech) Edlin came into the office in an unusually good mood and told her: "Well, I have made a new contact. There is no stopping us now. The sky's the limit. We'll have a chain of banks, Sadie, we are going to be [1390] rich. Seriously, Sadie, it is a Congressman." She also testified that she later asked Robinson why Edlin was so excited. Robinson asked her if she had ever heard of Congressman Johnson, and when she said she had not, Robinson told her, "You will hear plenty about him now. He is on our payroll. It is costing Ken [Edlin] plenty."

Johnson claimed at the trial that when he made the speech he did not know that an indictment was pending against Edlin. Buarque, the Congressman's administrative assistant, testified that he was aware of the indictment but did not inform Johnson. In closing arguments, the Government maintained that in the context of the events both Johnson's and Buarque's testimony was "incredible."

In addition, Mrs. Goldman said that in July, 1960, she asked Robinson what would happen to her job if Edlin were convicted. Robinson replied, "You have nothing to worry about. The Congressmen are being paid well and Ken [Edlin] will never go to jail. Don't worry."

The evidence is uncontradicted that Congressman Johnson did receive the checks mentioned in the indictment and that

when he, together with Congressman Boykin, spoke to the Attorney General and other members of the Justice Department in behalf of Edlin, he did not tell them that he was appearing as an attorney.

Both Robinson and Edlin conferred with Johnson a number of times as to the best approach to the Department. Robinson also prepared an analysis of the indictment for presentation to the Justice Department.

[1391] Louis Goldman, an attorney, testified that "Mr. Edlin from time to time would say that he had nothing to worry about the indictment. That his friends on the Hill would take care of it for him and that everything would turn out all right." In response to the question whether Edlin ever referred to costs, Goldman answered: "From time to time Mr. Edlin would say that it is costing him a lot of money and that the cost is eating him up." He also testified that on one occasion, noticing that Edlin looked worried—

> I asked him what was wrong, and at that time he told me that he was concerned with the fact that Congressman Boykin and Congressman Johnson were not getting anywheres with his indictment; that it was costing him a lot of money. When I asked him what he meant by that, he stopped for a minute, looked at me, and said, "Forget it." That was the end of that.

At the trial the appellants claimed that the checks listed in the indictment represented payments to Johnson for valid legal services. It was the Government's contention that to a large extent the alleged legal services were either performed by other attorneys or not performed at all. Our examination of the record leads to the conclusion that there was ample basis, both in the testimony in chief and in cross-examination of Johnson and Robinson, for the jury to believe that the appellants' explanation for the checks was false and that the money was paid to Johnson for making the speech and for using his influence in the Department of Justice.

For example, in his direct testimony Johnson related that he had performed legal services on 305 mortgages to the Cassell Land Company. His testimony was that over [1392] $1,600,000 was involved and that his job was to review the mortgages, half of which he found to be defective. To correct the defects, he testified, he and another lawyer drew up one confirmatory

mortgage. On cross-examination, he said he could not remember giving this testimony on direct, but repeated that there was a confirmatory mortgage. However, it was shown that before the Montgomery County Grand Jury he swore that he redrafted each of the defective mortgages. Faced with the conflict, he admitted that the grand jury testimony was incorrect. The prosecution then confronted him with a prepared statement he had issued, to the effect that "new *indentures* had to be made to correct the mistakes [in the mortgages]." [Emphasis added]. In addition to this obvious conflict, he then acknowledged on cross-examination that he did not prepare the confirmatory mortgage, but that another lawyer did.

Again, in direct testimony Johnson had said in reference to a proposed loan to the Savarin Development Corporation: "I did participate in the preparation of the entire loan agreement, the mortgages." Yet he later conceded that he did not mention the loan to the grand jury and, on cross-examination, stated that Robinson actually prepared the loan papers.

Two attorneys who assertedly worked with Johnson testified that they and not Johnson performed the legal work. One, Carrico, testified that shortly before the trial Johnson visited him and asked him to sign a prepared statement concerning Johnson's legal services. Carrico refused because the proffered statement recited that Johnson had visited him to discuss a foreclosure—a statement Carrico would not confirm and his records did not reflect.

[1393] Moreover, Johnson introduced into evidence many legal documents on which he had placed penciled notations. On cross-examination, however, a revealing light was shed when it was shown that Johnson had earlier given photostats of these same documents to the FBI and that the photostats were without the penciled marginal notes. Johnson had also furnished the FBI a photostat of a letter he had allegedly written to Robinson discussing the validity of a long agreement. The letter bore a Berlin, Maryland, return address, but its authenticity was impeached by the telephone company's records showing that throughout the day the letter was supposed to have been written in the town of Berlin, on the Eastern Shore of Maryland, Johnson placed long distance phone calls from his Washington office.

Robinson testified that Johnson was on a retainer, yet a statement he made to the FBI did not reflect this. On the contrary, in the FBI report, which he signed, he declared that particular checks were paid to Johnson for specific legal services. The checks, specified in the indictment, aggregating $17,550, which the appellants now claim were for legal services, are far in excess of the $6,000 to $7,500 claimed by Robinson in his interview with the FBI agent.

This testimony is representative of much more to the same effect. If believed by the jury, as it obviously was, it is more than sufficient to support the jury's verdict.

IV. Alleged Prejudicial Trial Errors

A. FBI agents' testimony—

[1394] At trial, the defense insisted that the checks specified in the indictment were payments to Johnson for legitimate legal services. Robinson and Johnson so testified. They both also testified that Johnson was on a retainer from the savings and loan associations controlled by Edlin.

To rebut this testimony, the Government called as a witness the FBI agent who had interviewed Robinson on January 11, 1962. In the course of the interview the agent made notes, then returned to his office and, from these notes, dictated a narrative statement which was subsequently typed and presented to Robinson. Robinson read, corrected and signed the statement. A copy was given to him.

The agent testified that in the interview Robinson made no mention of any retainer fee having been paid to Johnson. He also testified that after the statement was signed Robinson added that the total fees paid to Johnson were between $6,000 and $7,500. If believed by the jury it meant that the appellants' evidence that Johnson was on a retainer was probably false. The suggested inference is that if he were on a retainer, as now claimed, Robinson would have mentioned this fact to the agent. Moreover, the $6,000 to $7,500 testified to by the agent as the sum Robinson claimed to be the total legal fees, was far below that claimed by the appellants at the trial.

On cross-examination, the agent stated that after he dictated Robinson's statement he destroyed the interview notes in ac-

cordance with the then customary FBI procedure. The completed and signed statement of Robinson, which was made part of the agent's report, was retained in the FBI files. The agent further testified that while he was not aware at the time of the interview that Robinson was being [1395] investigated, he did recognize the possibility that Robinson might be called as a witness in a prosecution against Johnson. Robinson moved to strike the agent's entire testimony for the reason that the original notes of the interview had been destroyed. The court denied the motion and ruled the evidence admissible against Robinson, though not against Edlin.

Another FBI agent testified to an interview he had with Johnson's administrative assistant, Manuel Buarque. This agent's testimony was offered in rebuttal of certain testimony given by Buarque as a defense witness. At the interview, the agent made notes from which he later prepared his report. Buarque did not sign the report. Johnson's counsel moved that the agent's testimony be stricken because of the destruction of the notes. Again the trial court denied exclusion. Buarque, like Robinson, was furnished a copy of the report.

Appellant Robinson argues that the destroyed notes were a produceable "statement" under the Jencks Act, 18 U.S.C.A. § 3500, and that their willful destruction by the FBI required the agents' testimony to be stricken.[27] If the notes can qualify as a "statement," a serious question arises.

This is not the first time that a court has been called upon [1396] to consider the effect of the destruction of FBI interview notes. *Campbell* v. *United States*, 373 U.S. 487 (1963); *Killian* v. *United States*, 368 U.S. 231 (1961); *Ogden* v. *United States*, 323 F. 2d 818, 820–21 (9th Cir. 1963); *United States* v. *Greco*, 298 F. 2d 247 (2d Cir. 1961). Each time the problem has arisen the FBI has claimed that the notes were destroyed as part of FBI routine. This is really not a satisfactory answer. Where the agent testifies to matter he claims not to be in the notes and the defendant insists on a different version, an issue

[27] 18 U.S.C.A. § 3500(d) reads as follows:

"(d) If the United States elects not to comply with an order of the court under paragraph (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared."

arises which may not be satisfactorily resolved in the absence of the original notes. If the notes were available, they might confirm or refute one version or the other. One of the purposes of both the *Jencks* decision and the Jencks Act is to afford the defense an opportunity to impeach witnesses. *Palermo* v. *United States*, 360 U.S. 343 (1959); *United States* v. *Wenzel*, 311 F. 2d 164, 171 (4th Cir. 1962). The destruction of interview notes does not advance this purpose. Of course, a district court may find as a fact that the notes were not a substantially verbatim record, or that they were accurately copied into a report and then destroyed in good faith, but the necessity for inquiries along this line can be avoided by the preservation of notes until after the trial. Eliminating uncertainty may serve the interest of the Government no less than the defendant.

However this may be, as we view the Jencks Act, the notes in question do not qualify either as a "statement" or as a "report" as these terms are defined in the Act. Subsections (a), (b) and (e) are pertinent.

> (a) In any criminal prosecution brought by the United States, *no statement* or report in the possession of the United States which was *made by a Government* [1397] *witness* or prospective Government witness (other than the defendant) *to an agent of the Government* shall be the subject of subpena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.
>
> (b) *After a witness called by the United States has testified* on direct examination, the court shall, on motion of the defendant, order the United States to produce *any statement* (*as hereinafter defined*) *of the witness* in the possession of the United States which relates to the subject matter as to which the witness has testified. * * *
>
> * * * * * *
>
> (e) The term "statement," * * * in relation to any *witness called by the United States* means—
>
> (1) a written *statement made by said witness* and signed or otherwise adopted or approved by him; or
>
> (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement *made by said*

> *witness to an agent of the Government* and recorded contemporaneously with the making of such oral statement. [Emphasis added].

The italicized portions require that the obtainable "statement or report in the possession of the United States" must be made *by the witness*, and the witness must be a *government witness*. By its terms, the Act does not cover statements made either by a defendant or by a defense witness.

[1398] The FBI agents' reports were within the Jencks Act because in each instance the "report * * * was made by a Government witness * * * to an agent of the Government." *Holmes* v. *United States*, 271 F. 2d 635 (4th Cir. 1959). Copies of these verified statements were, as heretofore shown, in the defendants' possession. Assuming that the notes the agents made when interviewing Robinson and Buarque were "substantially verbatim recital[s] of oral statement[s]," they were at most statements of Robinson and Buarque, not statements "made by a Government witness."

Both FBI agents testified to their present recollection of the interviews. It was for the jury to consider the reliability and weight of their testimony, as compared to the testimony given by Robinson and Buarque.

B. ALLEGED COMMENT ON EDLIN'S FAILURE TO TESTIFY

Edlin claims that the prosecutor improperly commented on his failure to take the stand. The incident referred to occurred at the end of the Government's closing summary to the jury. After pointing out asserted inconsistencies in the appellants' positions, the prosecutor spoke these words:

> Members of the Jury, the defendant Edlin has presented no defense in this case. He has presented no evidence to contradict the charges against him. He has produced no evidence to deny numerous statements made by many, many government witnesses. He has produced no evidence to deny the testimony of numerous witnesses of his various activities which clearly indicate beyond any doubt, Members of the Jury, his guilt of the charges in this indictment.

[1399] In *Davis* v. *United States*, 279 F. 2d 127 (4th Cir. 1960), a similar argument was presented. The answer we gave applies with equal force here:

> The United States Attorney's argument cannot be said to have constituted a forbidden comment on the failure of the defendants to testify. He merely reviewed certain testimony and added, truthfully, that there was no evidence in contradiction.

The prosecutor did not draw improper attention to Edlin's refusal to testify. He merely pointed out that the defense did not introduce evidence to contradict certain of the prosecution's witnesses. Edlin was not the only person who could have refuted the Government's witnesses. *Leathers* v. *United States*, 250 F. 2d 159, 165 (9th Cir. 1957). The prosecutor addressed himself to the absence of anything in the record to contradict the Government's version of the case. Under these circumstances his comment was not improper. *Davis* v. *United States, supra; Garcia* v. *United States*, 315 F. 2d 133, 137 (5th Cir. 1963).

C. ALLEGED "TOTALITY OF PREJUDICE"

Edlin launches a more general attack on the trial, claiming that evidence admitted against one or more of his co-defendants constituted "in its totality" prejudice as to him. This amounts to no more than a continuation of his argument, dealt with earlier, that conspiracy cases in general often produce evidence against one defendant which may prove prejudicial to his co-defendant.

[1400] We have closely examined the numerous references to the record and find that they do not show the claimed "totality of prejudice." The record attests the close and careful attention the trial judge gave to questions of the admissibility of evidence. Wherever necessary he instructed the jury that evidence admissible only against certain appellants should not be considered against the others. We have earlier in this opinion pointed out the dangers inherent in conspiracy trials, but as long as Congress authorizes prosecutions for conspiracy and the Supreme Court adheres to its holdings that the Constitution does not proscribe them, we must rely in large measure on the alertness of district judges to protect the interests of the individual defendants by properly cautioning the jury as to

the purpose and effect of particular items of testimony. Indeed, the problem is potentially present whenever two or more defendants are jointly tried on any charge. The District Judge showed himself sensitive to the delicacy of his function as governor of the trial, and whenever the situation called for a specific instruction to the jury, appropriate instruction was given.

Where the trial judge finds that a defendant has been unduly harmed or his trial made unfair, he should in the interest of justice grant a new trial. *United States* v. *Decker*, 51 F. Supp. 20, 25–26 (D. Md. 1943). Upon full consideration, we cannot say that Edlin had an unfair trial. In the particular rulings, and in the totality of the trial we perceive no unfairness.

D. INSTRUCTIONS TO THE JURY

Each of the appellants presses the contention that certain portions of the court's charge to the jury were erroneous. [1401] First, it is said that the court committed reversible error in refusing to instruct the jury to acquit unless they found that the alleged legal services performed by Johnson were a "sham and pretense." The court refused the tendered instruction "because there is no requirement on the Government to prove sham and pretense."

The Government did not claim, nor was it necessary for it to show, that Johnson performed absolutely no legal services. The appellants' requested instruction, if granted, was susceptible of being understood by the jury as requiring it to find a set of facts beyond that charged by the Government. The court dealt with the subject adequately and avoided the possibility of misunderstanding when it told the jury that receipt of the compensation was illegal if it was, "in whole or in substantial part" for services rendered before the Department of Justice. This was unquestionably appropriate to direct the jury to the issue impartially. *United States* v. *Burton*, 202 U.S. 344 (1906).

The appellants also contend that the District Court erred in refusing their requested instruction on circumstantial evidence. This would have required the jury to disregard all circumstantial evidence unless it excluded every reasonable hypothesis except guilt. In *Holland* v. *United States*, 384 U.S. 121, 139–40 (1954), the Supreme Court explicitly rejected this formulation. Justice Clark, who wrote for a unanimous Court,

emphasized that "where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect [citations omitted]." Here the court did instruct on reasonable doubt, using the formulation approved by the Supreme Court in *Holland*. Refusal of the tendered instruction was not error. *United States* v. *Law-*[1402]*renson*, 298 F. 2d 880, 884 (4th Cir. 1960); *Milanovich* v. *United States*, 275 F. 2d 716, 721 (4th Cir. 1960), *rev'd on other grounds*, 365 U.S. 551 (1961).

Edlin requested an instruction to the effect that the jury could consider whether his actions were based upon the advice of counsel in determining his intent and good faith, *United States* v. *Painter*, 314 F. 2d 939, 943 (4th Cir. 1963). The Judge's charge incorporated the substance of the requested instruction, and refusal to adopt Edlin's very words was not error. Other requested instructions were rejected, but we find no error, because insofar as they asserted valid propositions of law they were in essence embodied in the charge.

V. Conclusion

Though we find the evidence sufficient to support a guilty verdict on all counts, the invalidity of count one as applied to Johnson was obviously prejudicial to his right to the unbiased consideration of the jury on the remaining counts. Many of the events testified to at the trial related only to the speech. It was introduced into evidence and its authorship, contents, motivations and accuracy made the subject of extensive inquiry. The conclusion is unavoidable that this mass of evidence and comment, all inadmissible against Johnson, infected the jury's consideration of his innocence or guilt under the conflicts of interest counts. The judgment against Johnson is therefore vacated and the case remanded for a new trial on the counts charging violations of 18 U.S.C.A. § 281. As to Edlin and Robinson, the convictions are affirmed.

[1403]

Judgment as to Johnson vacated and a new trial ordered with instructions; judgment as to Edlin and Robinson affirmed.

[1404] In the United States Court of Appeals for the Fourth Circuit

No. 9223

UNITED STATES OF AMERICA, APPELLEE

vs.

THOMAS F. JOHNSON, J. KENNETH EDLIN, AND WILLIAM L. ROBINSON, APPELLANTS

Judgment filed and entered—September 16, 1964

Appeals from the United States District Court for the District of Maryland.

This cause came on to be heard on the record from the United States District Court for the District of Maryland and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court as to Thomas F. Johnson appealed from, in this cause, be, and the same is hereby, vacated, and that the cause be, and the same is hereby, remanded to the United States District Court for the District of Maryland, at Baltimore, with directions to set aside the verdict and grant a new trial in accordance with the opinion of the Court filed herein; and that the judgments of the said District Court as to J. Kenneth Edlin and William L. Robinson appealed from, in this cause, be, and the same are hereby, affirmed.

SIMON E. SOBELOFF,
Chief Judge, Fourth Circuit.
CLEMENT F. HAYNSWORTH, Jr.,
United States Circuit Judge.
JOHN D. BUTZNER,
United States District Judge.

[1405] Supreme Court of the United States

October Term, 1964

No. —

UNITED STATES, PETITIONER

vs.

THOMAS F. JOHNSON

Order extending time to file petition for writ of certiorari—October 19, 1964

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 15, 1964.

EARL WARREN,
Chief Justice of the United States.

Dated this 19th day of October 1964.

[1406] Supreme Court of the United States

October Term, 1964

No. 695

UNITED STATES, PETITIONER

v.

THOMAS F. JOHNSON

Order allowing certiorari—January 25, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice White took no part in the consideration or decision of this petition.

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749-991—64——1

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

THOMAS F. JOHNSON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit reversing respondent's conviction for conspiracy to defraud the United States and for receiving payments, while being a member of Congress, for representing another person before the Department of Justice.

OPINIONS BELOW

The opinion of the court of appeals (Appendix A, *infra,* pp. 12–57) is not yet reported. The opinion of the district court is reported at 215 F. Supp. 300.

JURISDICTION

The judgment of the court of appeals (Appendix B, pp. 58–59, *infra*) was entered on September 16,

1964. On October 19, 1964, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including November 15, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the constitutional privilege provided by Article I, Section 6, for "any speech or debate" in Congress bars criminal prosecution of a Congressman for his acceptance of money to make a speech in Congress.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 6, of the United States Constitution provides in part:

> The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

18 U.S.C. 281, which was repealed subsequent to the commission of the acts involved in this case, provided in pertinent part:

> Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency

thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

18 U.S.C. 371 provides in pertinent part:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

Count 1 of an indictment returned in the District of Maryland charged that respondent and Frank W. Boykin, then Congressmen, conspired with two others between April 1960 and December 31, 1960, to defraud the United States of its right to have the Congressmen's duties performed free from corruption and uninfluenced by payments of money, and to have the business of the Department of Justice conducted impartially. It was charged that the Congressmen attempted to persuade the Department of Justice to postpone and dismiss an indictment pending against

persons connected with the First Colony Savings and Loan Association, and that, as part of the conspiracy, petitioner was paid to make a speech in Congress defending the operation of independent savings and loan associations (R.A. 1–19).[1] Seven other counts of the indictment charged that respondent, aided by the other defendants, was paid to intercede with Justice Department officials to persuade them to postpone and dismiss the pending indictment in violation of the conflict-of-interest statute, 18 U.S.C. 281 (R.A. 19–30). After a trial by jury, all defendants were convicted. Petitioner was sentenced to imprisonment for a concurrent period of six months on each count. He was also fined $5000 on the conspiracy count (R.A. 44–45).

On appeal, the court of appeals found the evidence "more than sufficient to support the jury's verdict" (App. A, *infra,* p. 48). It reversed respondent's conviction on count 1, however, on the ground that the "Speech or Debate" privilege of Article I, Section 6 bars a criminal prosecution of a Congressman for accepting money to make a speech in Congress (App. A, *infra,* pp. 17–30). It remanded for a new trial his conviction on the substantive counts, holding that evidence of this speech prejudiced his trial on these counts. The convictions of the other defendants were affirmed (App. A, *infra,* p. 57).

In brief, the evidence showed that in 1960 and 1961, J. Kenneth Edlin, the dominant figure in two Maryland savings and loan institutions (First Colony

[1] "R.A." refers to respondent's appendix in the court of appeals; "G.A." refers to the government's appendix in that court.

and First Continental), was under indictment for mail fraud in connection with activities of First Colony (R.A. 177, 256, 265–266). In April 1960, Edlin and defendant Robinson, an associate of Edlin's, consulted Martin Heflin, a public relations counselor, for the purpose of having a speech delivered in Congress on behalf of independent savings and loan associations (R.A. 180–184). After meeting with respondent, Heflin and Robinson supplied material for a proposed speech to respondent's administrative assistant (R.A. 189–190; G.A. 266–267). On June 20, 1960, Robinson sent respondent a check for $500 (R.A. 564). On June 30, 1960, respondent delivered a speech in Congress defending independent savings and loan associations (R.A. 931–937). Either immediately before or immediately after the speech was made, Edlin displayed a copy of its text, commenting that there was no reason to fear the mail fraud indictment (G.A. 266).[2] Reprints of the speech were used to induce prospective savers to deposit money in First Continental (G.A. 275–276).

Between August 1960 and March 1961, respondent received $3700 in checks from Robinson (Tr. 197–199, 716–728, 957–958). Between March and October 1961, respondent and Congressman Boykin visited officials of the Department of Justice to discuss the pending mail fraud indictment against Edlin in an attempt to convince the Department that it was unjust

[2] Early in June, Robinson informed Edlin's secretary that Congressman Johnson was "on our payroll," and Edlin made a similar statement without naming the Congressman (R.A. 161–163).

(R.A. 838–841, 357–359). During this period, respondent received $20,550 from Robinson and First Continental (G.A. 268–275, 281–290, R.A. 674–681).

In his defense, respondent claimed that he delivered the speech in response to a newspaper article and in order to create an issue for a forthcoming congressional campaign. He said that the $500 check was a campaign contribution (R.A. 565–569; G.A. 362–365). He testified that the other payments were for the performance of various legal services (see, *e.g.*, R.A. 575 *ff.*; G.A. 380 *ff.*).

In reversing respondent's conviction, the court of appeals held that the constitutional privilege of Article I, Section 6 deprives a court of jurisdiction to try a member of Congress on a criminal charge of accepting money to make a speech in Congress (App. A, *infra,* pp. 17–30). It ruled "that the Constitution has clothed the House of which he is a member with the sole authority to try him" (App. A, *infra,* p. 26). It deemed this interpretation of the Constitution necessary in order "to promote the independence of all congressmen" and "[t]o avoid restraint on free expression on the floor of either House" (App. A, *infra,* p. 28).

REASONS FOR GRANTING THE WRIT

1. The court of appeals has held that a Congressman is protected by the constitutional privilege of Article I, Section 6 against any criminal prosecution for receiving money in exchange for delivering a speech on the floor of Congress. While this precise question is itself of obvious importance because it affects public confidence in the integrity of Congres-

sional debate, the consequences of the decision extend beyond mere debate. For, as this Court observed in *Tenney* v. *Brandhove,* 341 U.S. 367, 372, the constitutional privilege, like its common law counterpart, embraces "[f]reedom of speech *and action* in the legislature * * *." (Emphasis added.) See *Kilbourn* v. *Thompson,* 103 U.S. 168, 201. Hence the reasoning of the court of appeals in this case might be thought to bar any prosecution of a Congressman for bribery even if what the Congressman sold was his vote rather than his speech. The effect of this decision, therefore, is to cast doubt upon anti-bribery legislation, first enacted more than a century ago to provide sanctions against the receipt of corrupt payments by Congressmen. Act of February 26, 1853, Section 6, 10 Stat. 171. See 18 U.S.C. 201 (Supp. V).

The fact that this is a case of first impression does not detract from its importance. The issue affects public confidence in Congressional debate—certainly a matter of great national significance. Moreover, if the court of appeals correctly concluded that the only remedy lies with Congress itself, the issue should be conclusively settled so that Congress may establish such machinery as is appropriate to deal with matters of this kind.

2. With regard to the merits, we believe that the court of appeals erred in assuming that in such a prosecution a legislative speech or debate is being "questioned" within the meaning of Article I, Section 6 of the Constitution. When a Congressman is prosecuted for having accepted money in exchange for a

speech, it is his antecedent conduct in agreeing to accept or accepting the bribe which is "questioned," and not the speech as such. That this is so may be demonstrated by considering a hypothetical case in which the Congressman accepts a bribe with corrupt intent but fails thereafter to carry out his bargain and does not make the speech. If he is then prosecuted, no speech will be "questioned" because no speech will have been made. The fact that the Congressman in this case fulfilled his promise and delivered the corrupt speech should not render the entire course of conduct constitutionally protected.

The same distinction is drawn with respect to other privileges recognized by law. A judge may not be held civilly or criminally answerable for the contents of any judicial decision. *E.g., Bradley* v. *Fisher,* 13 Wall. 335. But it has never been thought that this privilege clothes a judge with immunity from prosecution for accepting a bribe. Notwithstanding the Constitution's provision for impeachment of judges guilty of misconduct, the first Congress, many of whose members were closely identified with the drafting of the Constitution, enacted a statute providing criminal sanctions against judges who take bribes. Act of April 30, 1790, Sec. 21, 1 Stat. 112, 117. See *United States* v. *Manton,* 107 F. 2d 834 (C.A. 2), certiorari denied, 309 U.S. 664. In the prosecution of a judge for taking a bribe, the judge's corrupt judicial decision is evidence of the offense, but the decision as such is not being "questioned" as it would be, for example, if the judge were sued for

libel. In the latter case the act of rendering the decision constitutes the alleged offense; in the former, that act is merely evidence of the offense.[3]

We submit that the court of appeals' apprehension that prosecutions for bribery and allied crimes would interfere with legislative independence is not well founded (p. 28, *infra*). Congress itself obviously had no such concern when it provided for criminal punishment of Congressmen who accept bribes. 10 Stat. 171 (1853). More recently, in a comprehensive revision of the bribery, graft and conflicts-of-interest laws, it included Congressmen in a statute covering bribery of public officials. Act of October 23, 1962, 76 Stat. 1119, 18 U.S.C. 201 (Supp. V). Rather than operating as a restraint, such statutes help to eliminate suspicions that a legislator's acts are corruptly motivated and promote public confidence in the integrity of Congress. The Congressional preference for criminal prosecution, rather than a legislative proceeding, in cases involving such corruption is readily understandable. The criminal penalty places a Congressman's conduct under inquiry only if a grand jury determines that there is probable cause to believe that he has betrayed the public trust. It

[3] Similarly, the privilege recognized in *Barr* v. *Matteo*, 360 U.S. 564, could not conceivably extend to cases in which government officials are bribed to perform acts of the sort which are within the scope of their authority. Under the reasoning of the court of appeals in this case, such officials could never be prosecuted for bribery without violating the privilege since a bribery prosecution would "question" the motives behind the official act.

gives accused legislators the benefits of all the constitutional guarantees applicable in the trial of criminal cases. It provides an impartial tribunal to protect an unpopular Congressman from a politically motivated legislative tribunal. And it proceeds on the sound premise that in matters involving wrongdoing outside the halls of Congress, the courts provide a better forum for determining guilt or innocence. In applying this section of the Constitution, which was designed to promote legislative independence, Congress' judgment that such criminal prosecution does not restrain parliamentary freedom is entitled to great weight. Moreover, in the analogous area of judicial privilege, criminal prosecution for bribery does not appear to have interfered with the independence of the judiciary.

Finally, other jurisdictions which recognize the legislative privilege do not apply that privilege to criminal prosecutions for taking money. A case in which the problem was squarely presented and decided adversely to the claim of privilege was *Rex* v. *Boston,* 33 C.L.R. 386 (1923) (Australia). See, also, *Regina* v. *White,* 13 S.C.R. (N.S.W.) 322 (1875); *Regina* v. *Bunting,* 7 O.R. 524 (1885).[4]

[4] *Tenney* v. *Brandhove*, 341 U.S. 367, 378, held that State legislators were not subject to civil liability for legislative acts and that a court may not inquire into the motives of legislators when those acts constitute the basis for a civil claim. The court of appeals erred in treating that decision as requiring it to hold that Congress may not subject its own members to criminal prosecution for violations of federal statutes based essentially not on what legislators do on the floor of Congress but on criminal acts committed outside of Congress.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.[5]

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NOVEMBER 1964.

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[5] We also wish to reserve the right to argue that the reversal of the conspiracy court in this case did not require reversal of the substantive courts, none of which involved the speech made on the floor of Congress.

APPENDIX A

United States Court of Appeals for the Fourth Circuit

No. 9223

UNITED STATES OF AMERICA, APPELLEE

vs.

THOMAS F. JOHNSON, J. KENNETH EDLIN, AND WILLIAM L. ROBINSON, APPELLANTS

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE

ROSZEL C. THOMSEN, DISTRICT JUDGE

(Argued April 16, 1964. Decided September 16, 1964)

Before SOBELOFF, Chief Judge, HAYNSWORTH, Circuit Judge, and BUTZNER, District Judge

SOBELOFF, Chief Judge:

Two members of the United States Congress and two other persons were jointly indicted for violations of both the conspiracy statute, 18 U.S.C.A. § 371, and the conflicts of interest statute, 18 U.S.C.A. § 281.[1]

[1] See pre-trial opinion of District Court, *United States* v. *Johnson*, 215 F. Supp. 300 (D. Md. 1963).

After a jury trial the four defendants were convicted. One, Frank W. Boykin, a Representative from Alabama, paid his fine and has not appealed. This is the appeal of Representative Thomas F. Johnson of Maryland, and J. Kenneth Edlin and William L. Robinson.

The indictment was in eight counts. The first charged a conspiracy "to defraud the United States * * * (a) Of * * * its right to have * * * the official business of the Department of Justice, conducted honestly * * *. (b) Of * * * its right to have * * * personnel of the Department of Justice, free * * * of * * * unlawful, improper and undue pressure * * *. (c) Of * * * its right to have the lawful functions and duties of the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN * * * free from corruption * * *. (d) Of * * * its right not to be deprived of the faithful, loyal and conscientious services of the defendants THOMAS F. JOHNSON and FRANK W. BOYKIN * * *."[2] This count alleged that as part of the conspiracy Johnson was paid to make a speech in Congress and to persuade officials of the Department of Justice to cause the postponement and eventual dismissal of a criminal action then pending against Edlin.

The remaining seven counts charged Johnson with the substantive offenses of receiving payment for representing Edlin before the Justice Department. 18 U.S.C.A. § 281. In these counts Robinson and Edlin were charged as aiders and abettors.

I. THE INDICTMENT

A. FIRST COUNT—CONSPIRACY

The appellants attack the validity of count one on two broad fronts. First, they say that in general

[2] Paragraph 14, subparagraphs (a) to (d) of the indictment.

conspiracy indictments should not be tolerated because of the abuses which they engender. Second, they contend that this particular indictment is defective in a number of ways.

1. *Alleged Invalidity of Conspiracy Indictments*

The appellants' criticism of conspiracy indictments is not wholly without foundation. They are not the first to express the view. Similar statements can be found in concurring and dissenting opinions in the Supreme Court and in a number of Law Review articles. *Krulewitch* v. *United States,* 336 U.S. 440, 445–48 (1949); *Kotteakos* v. *United States,* 328 U.S. 750, 760–74 (1946). Goldstein, "Conspiracy to Defraud the United States," 68 Yale L.J. 405 (1958). The dragnet effect of conspiracy indictments, their sometime indiscriminate use and the unfair advantage they may give to the prosecution in respect to evidence and proof are well known. While this is true, the Supreme Court has not said that conspiracy indictments as such are improper; convictions based upon them have been repeatedly upheld. The net effect of the Court's expressions of concern is an admonition to scrutinize carefully the allegations of such indictments and the proof adduced in their support.

2. *Specific Attacks on First Count*

a. Vagueness and indefiniteness

The appellants insist that count one is indefinite and vague and fails to inform them of the charge alleged. Our reading of the count does not confirm this contention. The count alleges a conspiracy "to defraud the United States." Subparagraph (a) to (d) of paragraph 14, summarized above, enumerate four governmental functions and rights which are alleged to have

been defrauded. It was not necessary to allege that the Government had been defrauded of money or property. Section 371 has consistently been interpreted to support an indictment charging that a lawful function of the Government has been interfered with or obstructed. *Hammerschmidt* v. *United States* 265 U.S. 182 (1924); *Curley* v. *United States,* 130 Fed. 1 (1st Cir.), *cert. denied,* 195 U.S. 628 (1904); *Haas* v. *Henkel,* 216 U.S. 462 (1910).

Paragraphs 15 to 25 of count one state the objects and purposes of the conspiracy. Thereafter 75 overt acts are alleged. Contrary to the appellants' contentions, the indictment did not give the Government carte blanche to introduce evidence and frame any imaginable purpose of the conspiracy. In plain and concise language the paragraphs 15 to 25 effectively define the objects and delineate the proof. This is all that Rule 7(c)[3] of the Rules of Criminal Procedure requires. See *May* v. *United States,* 175 F. 2d 994 (D.C. Cir.), *cert. denied,* 333 U.S. 830 (1949); *United States* v. *Manton,* 107 F. 2d 834 (2d Cir. 1938), *cert. denied,* 309 U.S. 664 (1940).

b. Duplicity

Because count one alleges both Johnson's speech *and* his discussions with members of the Justice Department, the appellants maintain that it is duplicitous. The short and, we think, sufficient answer is that the indictment charges only one conspiracy—to defraud the United States—and this is not changed by the assertion of more than one means used to accomplish the object. "The conspiracy is the crime, and

[3] "7(c) The indictment * * * shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. * * *"

that is one, however diverse its objects." *Frohwerk* v. *United States,* 249 U.S. 204, 210 (1919).[4]

c. Alleged insufficiency of allegations charging fraud

We must also reject the argument that count one was fatally defective because it failed to charge any false statement, misrepresentation or deceit. In *Hammerschmidt* v. *United States,* 265 U.S. 182, 188 (1924), the Supreme Court defined the word "defraud" as used in what is now section 371:

> "To conspire to defraud the United States means primarily to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, *or at least by means that are dishonest.*" (Emphasis added.)

Since *Hammerschmidt,* numerous cases have held that the payment of money by a private person to an official of the Government for the performance of an official act constitutes a fraud. *United States* v. *Manton, supra; Glasser* v. *United States,* 315 U.S. 60 (1942); *May* v. *United States, supra; United States* v. *Bowles,* 183 F. Supp. 237 (S.D. Me. 1958). *Glasser* really closed the debate. There the Court, citing *Hammerschmidt,* said:

> "The indictment charges that the United States was defrauded by depriving it of its lawful governmental functions by dishonest means; it is settled that this is a 'defrauding' within the meaning of [section 371] of the Criminal Code." 315 U.S. at 66.

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[4] See also *United States* v. *Manton, supra,* and *May* v. *United States, supra,* where the same contention was raised and rejected.

The indictment in paragraphs 15 to 25 explicitly stated that it was a part of the conspiracy for appellant Johnson to receive compensation from appellants Edlin and Robinson. Manifestly this is a "dishonest means," in the *Hammerschmidt* phrase, and is sufficient to support an indictment under section 371.

d. The alleged impossibility of defrauding the Justice Department

Appellant Edlin contends that the conspiracy count must fail because it was impossible to defraud the United States in connection with the criminal charge pending against him. His position is that it was not within the power of the Department of Justice to effectuate a postponement of the trial or a dismissal of the indictment, because that power was solely in the court. The argument is specious: It is true that the court's consent would be required to dismiss a pending charge, Rule 48(a), Fed. R. Crim. P., but in a practical sense, as the Department is in charge of the prosecution, its decision to postpone a trial, or even to abandon a case, has great, if not decisive, influence with the court.

e. Congressional privilege

Appellant Johnson's principal contention is that insofar as the indictment questions his motivation in making a speech on the floor of the House, it contravenes Article I, section 6 of the Constitution.

> "The Senators and Representatives shall receive a Compensation for their services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases except Treason, Felony and Breach of the Peace, be privileged from Arrest during

their Attendance at the Session of their respective Houses, and in going to and returning from the same; *and for any Speech or Debate in either House, they shall not be questioned in any other Place.*" (Emphasis added.)

This is the first case, within our knowledge, squarely raising the question whether the congressional privilege deprives a court of jurisdiction to try a member on a criminal charge of accepting money to make a speech in the House of which he is a member.

The history of the parliamentary privilege is a long and turbulent one, developed in the course of conflict between Parliament and the Crown as to the proper subjects of discussion on the floor of Parliament.[5] The Crown asserted that matters then under debate in Parliament were within the King's prerogative, while Parliament insisted that it was protected by the privilege. Particularly disconcerting to the Crown was Parliament's intrusion into matters affecting the succession and into questions of religion. During the reigns of both Queen Elizabeth and James I the Crown resisted Parliament's expansion of its independence. More than once, members of Parliament were committed to the Tower.[6]

The accession of Charles I brought continued conflict.[7] In 1629 three members of the House of Commons, Sir John Elliot, Denzill Holles and Benjamin Valentine, when arrested and prosecuted for libelous

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[5] See generally May, Treatise on the Law, Privileges, Proceedings and Usage of Parliament (16th ed. 1957); Wittke, The History of English Parliamentary Privilege (Ohio State University 1921).

[6] Taswell-Langmead, English Constitutional History from the Teutonic Conquest to the Present Time, 249 (11th ed. 1960).

[7] Chrimes, English Constitutional History, 151–53 (2d ed. 1953).

and seditious speeches, pleaded to the jurisdiction of the court. They maintained that they were punishable, if at all, only in Parliament. The King's Bench rejected their plea and convicted them, Judge Sir William Jones observing: "We are the judges of their lives and lands; therefore of their liberties." 3 Howell, State Trials, 296, 306. The decision was very unpopular and contributed to the eventual downfall of Charles.[8]

Immediately after the Revolution of 1688, Parliament enacted the Bill of Rights containing the following declaration: "[T]hat the freedom of speech, and debates, and proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament." Since then the privilege of speech and debate has never been questioned or denied.

The scope of the privilege is demonstrated in the English case, *Ex parte Wason,* 4 Q.B. 573 (1869). There the English court held that a conspiracy by a number of persons, including members of the House of Lords, to make false statements in the House was not an offense at law, because the courts were powerless to question the motives and intentions of members when speaking before the Parliament.

In the landmark case of *Stockdale* v. *Hansard,* 9 Adolphus & Ellis 1 (1839), Lord Denman described the privilege, by then fully developed, in these words:

> "The privilege of having their debates unquestioned, though denied when the members began to speak their minds freely in the time of Queen Elizabeth, and punished in its exercise both by that princess and her two successors, was soon clearly perceived to be indispensable and universally acknowledged. By conse-

[8] Wittke, *op. cit. supra,* n. 5.

quence, whatever is done within the walls of either assembly must pass without question in any other place. For speeches made in Parliament by a member to the prejudice of any other person, or hazardous to the public peace, that member enjoys complete impunity. For every paper signed by the speaker by order of the House, though to the last degree calumnious, or even if it brought personal suffering upon individuals, the speaker cannot be arraigned in a court of justice. But if the caluminous or inflammatory speeches should be reported and published, the law will attach responsibility on the publisher. So if the speaker by authority of the House order an illegal act, though that authority shall exempt him from question, his order shall no more justify the person who executed it than King Charles's warrant for levying ship-money could justify his revenue officer."

Early in the history of the American colonies, the privilege of speech was recognized,[9] and many of them placed it in their constitutions when they achieved independence.[10] "The provision in the

[9] Clarke, Parliamentary Privilege in the American Colonies, 71 (1943).

[10] See, *e.g.*, Maryland Declaration of Rights, Nov. 3, 1776 ("That freedom of speech, and debates or proceedings, in the legislature, ought not to be impeached in any other court or judicature."); Massachusetts Constitution of 1780, Art. VIII ("The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action, or complaint, in any other court or place whatsoever."); New Hampshire Constitution of 1784, Part 1, Art. XXX ("The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any action, complaint, or prosecution, in any other court or place whatsoever.").

United States Constitution was a reflection of political principles already firmly established in the States." *Tenney* v. *Brandhove,* 341 U.S. 367, 373 (1951).

In an 1808 Massachusetts decision by the highest court of that state,[11] subsequently characterized by the Supreme Court of the United States as an authoritative description of the constitutional provision, Chief Justice Parsons wrote:

> "These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. I, therefore, think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate, but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature and in the execution of the office. And I would define the article as securing to every member exemption from prosecution for everything said or done by him as a representative, in the exercise of the functions of that office, without inquiring whether the exercise was regular, according to the rules of the House, or irregular and against their rules. I do not confine the member to his place in the House; and I am satisfied that there are cases in which he is entitled to this privilege when not within the walls of the representatives' chamber."

What we derive from this historical review of the congressional privilege is a firm conviction that the constitutional provision is to be interpreted liberally and not narrowly. We also conclude that the general

[11] *Coffin* v. *Coffin,* 4 Mass. 1 (1808).

test to be applied where the privilege is asserted is that whenever the motivation for making a speech is called into question, the privilege applies. Two leading Supreme Court opinions confirm this view.

Kilbourn v. *Thompson,*[12] decided in 1880, held, among other things, that a congressman who initiates, supports and votes for a resolution calling for the arrest of another person cannot be questioned in court in a suit for malicious prosecution. In 1951, *Tenney* v. *Brandhove* [13] confirmed *Kilbourn's* holding that the courtroom is not the proper place to question the motives of legislators where they are acting within their traditional sphere. Justice Frankfurter, speaking for the Court, said:

> *"The claim of an unworthy purpose does not destroy the privilege.* Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of this Court in *Fletcher* v. *Peck,* 6 Cranch 87, 130, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned." 341 U.S. at 377. (Emphasis added.)

Equally broad is the textwriters' description of the privilege.[14] While none of them treats directly the

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[12] 103 U.S. 168 (1880).

[13] 341 U.S. 367 (1951).

[14] 1 Blackstone, Commentaries, 164 (Cooley, 4th ed. 1899); 2 Cooley, Constitutional Limitations, 929 (8th ed. 1927); Cushing, Legislative Assemblies, § 601 (2d ed. 1866) ("[I]n

question before us, the language of each is unequivocal in attributing to the constitutional provision wide and almost absolute scope.

What we have said thus far is, we think, generally accepted. The question with which we are faced is whether these general principles become inapplicable when bribery is a motivating factor for making a speech in a legislative chamber. The Australian courts have considered the effect of the privilege where criminal prosecutions were brought against legislators for taking bribes to cast their votes and held that the privilege did not protect accused legislators. *Regina* v. *White,* 13 S.C.R. (N.S.W.) 332 (1875); *Rex* v. *Boston,* 33 C.L.R. 386 (1923). See also the Canadian case of *Regina* v. *Bunting,* 7 O.R. 524 (1885). These cases are not binding on us but we consider them, especially as they bear on the historic concept of the privilege.

While it is true that count one of the indictment alleges a "conspiracy to defraud the United States" and not bribery, the District Court, by citing federal and state statutes which make the acceptance of a bribe a criminal act, recognized the close relation between the two.[15] The District Judge also noted that

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short, * * * the privilege in question secures the members of a legislative assembly against all prosecutions, whether civil or criminal, on account of any thing said or done by them, during the session, resulting from the nature and in the exercise of their office."); DeLome, The Constitution of England, 66 (5th ed. 1885); 2 The Works of James Wilson, 37–38 (1896); Schwartz, A Commentary on the Constitution of the United States, 104 (1963); 1 Story on the Constitution, § 866, p. 600 (3d ed. 1858) ("The next great and vital privilege is the freedom of speech and debate, without which all other privileges would be comparatively unimportant or ineffectual."); 1 Willoughby, The Constitution of the United States, § 233 (1910).

[15] *United States* v. *Johnson,* 215 F. Supp. 300, 306 n. 6 (D. Md. 1963).

in no instance has the constitutionality of either the federal or a state bribery statute ever been questioned. Reasoning by analogy from these statutes and the state cases decided under them—which do not, however, discuss the constitutional question—the Judge concluded that "the prosecution of a Member of Congress for receiving money from a private person for making a speech on the floor of the House would not be barred by Art. I, sec. 6, cl. 1 of the Constitution." 215 F. Supp. 300, 307 (D. Md. 1963).

Basic to the conclusion of both the District Judge and the Government is the reasoning that "[t]o hold Count One of the present indictment barred by the privilege would subvert rather than advance the purpose for which the privilege exists—*the independence of the legislator in the fulfillment of his public trust.*" 215 F. Supp. at 307. (Emphasis added.) It would be less than candid to deny the appeal of this reasoning, for one readily perceives a difference between fearless speech and corrupt speech, but after deliberate consideration we must reject the District Court's conclusion.

Inevitably, the indictment required an inquiry into Johnson's reason for delivering the speech, the very inquiry which the Supreme Court has explicitly declared to be beyond a court's power. *Tenney* v. *Brandhove,* 341 U.S. 367 (1951). The contents of the speech as such were not challenged. In fact the indictment attacked only the purpose for which the speech was made, *i.e.,* "to defraud the United States." To prove this, however, the speech in its entirety was introduced into evidence and was commented upon extensively by the prosecution during the trial and in the closing arguments. Since Johnson could not deny making the speech it naturally became necessary for him to demonstrate that his purpose

for delivering it was good. But the Supreme Court has declared in *Tenney* that "[t]he claim of an unworthy purpose does not destroy the privilege." 341 U.S. at 377. The speech was more than an incidental feature of the conspiracy charged. Fully one-half of the testimony introduced at the trial related to the speech.

Federal cases discussing the privilege have repeatedly held that the good or bad faith of the member making the speech is immaterial. Indeed this is precisely the teaching of *Tenney*. In *Cochran* v. *Couzens*, 42 F. 2d 783 (D.C. Cir.), *cert. denied*, 282 U.S. 874 (1930), for example, the complaint alleged that a Senator "[m]aliciously, wilfully, falsely and wrongfully" delivered a "scandalous, malicious and defamatory slander" in a speech on the floor of the Senate. In affirming the District Court's dismissal of the complaint, the court held that "the words forming the basis of plaintiff's action were uttered in the course of a speech in the chamber of the Senate of the United States, and were *absolutely privileged* and not subject to 'be questioned in any other place.'" 42 F. 2d 784. (Emphasis added.) The court added:

> "It is manifest that the framers of the Constitution were of the view that it would best serve the interests of all the people if members of the House and Senate were permitted unlimited freedom in speeches or debates. The provision to that end is, therefore, grounded on public policy, and should be liberally construed. Presumably legislators will be restrained in the exercise of such a privilege by the responsibilities of their office. Moreover, in the event of their failure in that regard, they will be subject to discipline by their colleagues. Article 1, § 5." 42 F. 2d at 784.

See also *Barsky* v. *United States*, 167 F. 2d 241 (D.C. Cir. 1948).

Couzens, we note, was a civil action, but it would be inconsistent to conclude that a corrupt speech is less within the congressional privilege when labeled a crime. It may be argued with some reason that it is not indispensable to the "independence of a legislator" to shield him from court action when he uses his office to willfully and intentionally slander another in a speech; yet, as we have seen, he cannot be called to account in a court of law for such a willful abuse. The constitutional protection against being called upon to answer in "any other place" for a speech delivered in the House is equally impaired whether the court proceedings are criminal or civil. Indeed, fear of criminal prosecution may be the graver inhibition.

Coffin v. *Coffin*, which was quoted at length by the Supreme Court in both *Kilbourn* and *Tenney*, emphasized that the privilege belongs to the Congress and was developed for the benefit of Congress as a whole. This does not mean that a member of Congress is immune from sanction or punishment. Nor does it mean that a member may with impunity violate the law; it means only that the Constitution has clothed the House of which he is a member with the sole authority to try him. In this respect the Constitution has made the Houses of Congress independent of other departments of the Government. These bodies, the Founders thought, could be trusted to deal fairly with an accused member and at the same time to do so with proper regard for their own integrity and dignity.

The broad interpretation we give to the congressional privilege does not, we believe, contravene a caveat the Supreme Court placed at the conclusion

of both the *Kilbourn* and *Tenney* opinions. In its entirety, the caveat pronounced in *Kilbourn* reads:

> "It is not necessary to decide here that there may not be things done, in the one House or the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible. If we could suppose the members of these bodies so far to forget their high functions and the noble instrument under which they act as to imitate the Long Parliament in the execution of the Chief Magistrate of the nation, or to follow the example of the French Assembly in assuming the function of a court for capital punishment we are not prepared to say that such an utter perversion of their powers to a criminal purpose would be screened from punishment by the constitutional provision for freedom of debate." 103 U.S. at 204–05.

From the illustrations hypothesized in the caveat, it is plain that the Court envisioned a situation so extreme that the Congress as a whole, because of its total involvement in the corruption was incapable of taking appropriate disciplinary action against individual members. No such situation is before us, nor does this case even remotely approximate one.

All will agree that when a congressman accepts compensation for a speech, his act is reprehensible. However, the privilege being applicable, courts are barred from exercising jurisdiction, and the duty falls upon the House of Congress to punish its offending member. It is not an unfamiliar concept to bar a conviction, regardless of how contemptible the defendant's act may be, in order to protect and preserve an important constitutional principle. This is precisely the doctrine underlying the innumerable cases involving violations of the Bill of Rights and the Fourteenth Amendment. No better examples need

be cited than the recent cases of *Mapp* v. *Ohio* [16] and *Gideon* v. *Wainwright*.[17]

Judicial enforcement of the constitutional rights asserted in these two, and in similar, cases goes even further, for it often removes all possibility of punishment, while here sanctions remain unimpaired which may be imposed by the House membership.[18] If these sanctions be deemed insufficient in particular cases, the limitation comes from the Constitution.

A practical reason exists for invoking the congressional privilege, which meets the objective of the constitutional provision. The design is to promote the independence of all congressmen. To avoid restraint on free expression on the floor of either House, protection is given against the hazard and harassment of inquiry in any court. It is no answer, therefore, to say that if the accused member is innocent of accepting a bribe he has nothing to fear. A groundless charge may be sufficient to destroy him at the polls. Moreover, the process of indictment by a grand jury and inquiry in a court may itself be so devastating that an innocent congressman may well fear it.

It is interesting to note that the Supreme Court has recently used a similar approach in related areas involving potential impediments on constitutional rights. Discussing the oath condemned in *Baggett* v. *Bullitt*, —— U.S. ——, —— (1964), Mr. Justice White said:

> "The uncertain meanings of the oaths require the oathtaker—teachers and public servants—

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[16] 367 U.S. 643 (1961).

[17] 372 U.S. 335 (1963).

[18] Art. I, § 5, cl. 2 of the United States Constitution reads. "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."

> to 'steer far wider of the unlawful zone,' *Speiser* v. *Randall,* 357 U.S. 513, 526, than if the boundaries of the forbidden areas were clearly marked. Those with a conscientious regard for what they solemly swear or affirm, sensitive to the perils posed by the oath's indefinite language, avoid the risk of loss of employment, and perhaps profession, only by restricting their conduct to that which is unquestionably safe. Free speech may not be so inhibited."

Similarly in *New York Times Co.* v. *Sullivan,* 376 U.S. 254,278 (1964), the court said:

> "Whether or not a newspaper can survive a succession of such judgments, the pall of fear and timidity imposed upon those who would give voice to public criticism is an atmosphere in which the First Amendment freedoms cannot survive."

In that case, Mr. Justice Goldberg in a concurring opinion quoted Judge Learned Hand's summary of the policies underlying the grant of immunity against liability to legislators, judges and executive officers. The same policies apply here.

> " 'It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge

> of their duties. Again and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation.' * * * *Gregoire* v. *Biddle,* 177 F. 2d 579, 581." 376 U.S. at 302–03.

In the case of a congressman, the possibility—even the likelihood—of ultimate vindication in a court proceeding is no substitute for the guarantee held out by the Constitution.

Count one of the indictment is unconstitutional as applied to defendant Johnson. But as none of the privileges of Article I, section 6 pertain to the defendants who are not members of Congress, their attack on the first count, unlike Johnson's, is not sustained.

B. COUNTS 2 TO 8

We turn now to the remaining counts of the indictment. Counts 2 to 8 allege substantive violations of 18 U.S.C.A. § 281.[19] Each count charges that Johnson

[19] Section 281 provides, in part:

"Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency

conferred with officials of the Justice Department in an attempt to secure the postponement and eventual dismissal of criminal charges pending against Edlin in Maryland, and that for these service he received compensation.

I. *Venue*

It is conceded that none of the services recited in the indictment was rendered in Maryland. The charge is that Johnson received seven checks—one for each of counts 2 to 8—and that he deposited them all in a Maryland bank. Four of the checks (counts 3 to 6) were drawn on a Maryland bank and three (counts 2, 7 and 8) on a Florida bank. The appellants contend that Maryland was not the proper district in which to try these substantive counts because the checks were delivered to Johnson in Washington, D.C., and that was where "compensation" was received.

Venue is more than a technical concept; it is a constitutional requirement. Article III, section 2, clause 3 commands that "[t]he Trial of all Crimes * * * shall be held in the State where the said Crimes shall have been committed * * *." As pointed out by Justice Frankfurter in *United States* v. *Johnson,* 323 U.S. 273, 275 (1944), the Sixth Amendment "under-

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thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

score[s] the importance of this safeguard" in requiring trial "by an impartial jury of the State and district wherein the crime shall have been committed." See also *United States* v. *Cores,* 356 U.S. 405 (1958).

In the case of *Burton* v. *United States,* 196 U.S. 283 (1905), the Supreme Court had occasion to pass upon the nature of checks as compensation. The indictment in that case charged the defendant, a United States Senator, with the receipt of various checks at St. Louis, Missouri. The case was tried in the United States District Court of Missouri where the evidence showed that the checks, drawn on a St. Louis bank, were in fact delivered in Washington, D.C. The defendant contended, unsuccessfully in the District Court, that Washington, not Missouri, was the proper venue.

The Supreme Court noted that after the defendant received the checks in Washington he endorsed and deposited them in a Washington bank. After a detailed discussion of the relevant banking laws, the Court concluded that the Washington bank became the owner of the checks upon Burton's endorsement and was not his agent for collection from the St. Louis bank. The Court then held:

> "All this made a payment at Washington, and as a result there was a total lack of evidence to sustain the sixth, seventh, eighth and ninth counts of the indictment. The court should have, therefore, directed a verdict of not guilty on those counts." 196 U.S. at 304.

The case makes it clear that the place of the delivery of a check is not the sole determinative of venue. If it were, the Court's wrestling with banking laws to determine where the payment of the check occurred would have been needless and irrelevant. *United States* v. *Lotsch,* 102 F. 2d 35 (2d Cir. 1939).

Burton does not supply the answer as to venue for all of the substantive counts, but it is conclusive as to counts 3 to 6. In these counts it was alleged that Johnson received checks drawn on one Maryland bank and deposited them in another Maryland bank. Maryland banking law, unlike that in force in Washington, D.C., at the time of the *Burton* case, designates a bank in which a check is deposited, as an agent for collection only. 1 MD. CODE (1957), Art. 11 §§ 119, 121. This presents no problem as to counts 3 to 6, for the bank making final payment, *i.e.*, the drawee bank, and also the bank in which the checks were deposited were both located in the District of Maryland.

The venue for counts 2, 7 and 8 is not as clear, because in these counts the drawee bank was located in Florida, while the depositing bank was in Maryland. *Burton* did not consider the effect on venue where the depositing and paying banks are in different districts.[20]

The Government contends further that on these three counts venue in Maryland can be supported on the theory that when a check is involved, "compensation" constitutes a continuing offense within the meaning of 18 U.S.C.A. § 3237[21] and that a prosecu-

[20] Justice Harlan dissented from the Court's opinion in *Burton*. He took the view that the Washington bank in which Burton deposited the check was only an agent for collection, and that the St. Louis bank, the drawee bank, was the bank making final payment. Because of this position he, unlike the other Justices, was required to consider the effect on venue where the depositing district and the payment district are different. His conclusion was that venue was properly laid in the District Court at St. Louis.

[21] 18 U.S.C.A. § 3237 reads, in pertinent part, as follows:

"(a) Except as otherwise expressly provided by enactment of Congress, any offense against the United

tion can be brought for a violation of section 281 either where the check was deposited or where it was paid. The proposition is well supported.

In *Benson* v. *Henkel,* 198 U.S. 1, 9 (1905), a prosecution for bribery, the indictment charged that "the defendant unlawfully *gave* to such officer, in the District of Columbia, certain sums of money, with the intent to induce him to do an act in violation of his lawful duty * * *." (Emphasis added.) The evidence showed that the defendant had mailed cash from California to the District of Columbia. The contention was that venue lay in California, where the cash was mailed, and not in Washington, where the case was tried. The Court disagreed, noting that "the case is treated as covered by sec. 731 [now 18 U.S.C.A. § 3237], providing that when an offense is begun in one District and completed in another it shall be deemed to have been committed in either, and be tried in either, as though it had been wholly committed therein."

The Government's position is that if *giving* can be considered a continuous act so too can *receiving* which is the same act viewed from the other side. We consider the analogy sound and, like the District Court, adopt it. When Johnson deposited the Florida checks in his Maryland bank for collection he started a chain of events not unlike the mailing of cash in *Benson.*[22]

States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed."

[22] This conclusion does not conflict with Justice Harlan's dissent in *Burton,* noted in n. 20. The original prosecution against Senator Burton was brought in the district where, as Justice Harlan concluded, final payment was made on

We are fully advertent to certain language in the *Burton* case which, standing alone, appears to cut the other way.

> "This is not a case of the commencement of a crime in one district and its completion in another, so that under the statute the court in either district has jurisdiction. Rev. Stat. sec. 731; 1 Comp. Stat. p. 585. There was no beginning of the offense in Missouri. The payment of the money was in Washington, and there was no commencement of that offense when the officer of the Rialto Company sent the checks from St. Louis to defendant. The latter did not thereby begin an offense in Missouri." 196 U.S. at 304.

We agree with the District Court that the above language does not negative the result we reach here. The *Henkel* and *Burton* cases were decided at the same term, and the Supreme Court in *Burton* was merely rejecting a government argument that one is guilty of receiving compensation at the moment a check is sent by the payer. In the instant case the indictment alleged, and the proof established, that Johnson both received and deposited the checks in Maryland.

We conclude, therefore, that the District of Maryland was a proper venue for the prosecution of the substantive counts, 2, 7 and 8, as well as 3 through 6.

2. *Application of Section 281 to Johnson*

It is the appellants' position that counts 2 to 8 fail to state an offense against Johnson because his

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the check, *i.e.*, Missouri. Justice Harlan held this to be proper. In the instant case, had the original prosecution been brought in Florida, the situs of the drawee bank, the continuing offense statute would have supported venue there, as well as in Maryland.

conversations with officials of the Justice Department were in his capacity as an attorney in connection with a case pending in court. Hence they contend that section 281 covers neither Johnson as principal nor the others as aiders and abettors. The argument is hollow. Steadfastly throughout the trial Johnson maintained that he was not acting as an attorney. But even if he had maintained the contrary, the mere fact that the conversations related to a pending court proceeding would not bar a prosecution under section 281.

The purpose of section 281 is stated in *United States* v. *Adams,* 115 F. Supp. 731, 734–35 (D.N.D. 1953):

> "... [section 281] was aimed at preventing Congressmen, officers and employees of the United States Government from using the weight of their positions or their influence in connection with matters which were to be determined before any department, agency, court martial, officer or commission and was to assist in insuring the integrity of such departmental determinations."

See also *United States* v. *Burton,* 202 U.S. 344, 368 (1906).

The legislative history of the predecessor to section 281 makes it clear that Congress considered and rejected a proposal to prohibit lawyer-congressmen from appearing as counsel in courts. This policy decision continues to this day, and its rationale is obvious. Governmental departments, agencies, etc., are dependent upon Congress for support, and therefore these bodies are readily susceptible to pressures from individual Senators and Representatives. Courts, on the other hand, are surrounded by protections to assure their independence. A lawyer-congressman's status and influence when he appears in open court are entirely different when he intervenes

in a departmental matter. This difference was given legislative recognition.

Senator Trumbull, Chairman of the Senate Judiciary Committee when the statute was originally considered, reported to the Senate that the Committee proposed "to restrain members of Congress * * * from receiving a compensation * * * for doing any business before any Department * * * or anywhere else *except in the judicial tribunals* of the country." Cong. Globe, 38th Cong., 1st Sess. (1864), p. 555. (Emphasis added.) He added:

> "This is not a bill to prevent attorneys from practising in courts of law, but it is a bill to prevent Representatives and Senators in Congress * * * from receiving a compensation for advocating claims in the departments and before the bureaus of the government * * *." Cong. Globe, 38th Cong., 1st Sess. (1864), p. 561.

While Edlin in particular stresses this history, it does not support his contention. The evidence was undisputed that Johnson did not enter his appearance in the criminal case pending against Edlin. In fact, the attorney who did represent Edlin in the criminal trial was not even aware of Johnson's efforts in behalf of Edlin.

Edlin also argues that the indictment is defective because, "[t]he plain words of § 281 confine its operation to services in proceedings *pending* before any department, agency or officer of the Government. (Emphasis added). As the District Court noted, section 281 does not use the word "pending." "The words 'before any department, agency,' etc., refer to where the services have been rendered or are to be rendered, not where the proceeding or other matter is pending." 215 F. Supp. 300, 316. The services alleged in the indictment were in relation to a matter

in which the United States was a party, namely the criminal charge pending against Edlin; and the services were performed before a department, namely the Department of Justice. As noted above, the Department did have a significant role, and it had the power to take affirmative action as a result of Johnson's visits. Counts 2 to 8 of the indictment as they pertain to Johnson are sufficient. See *United States* v. *Burton,* 202 U.S. 344 (1906); *United States* v. *Quinn,* 111 F. Supp. 870 (E.D.N.Y. 1953). *Cf. United States* v. *Waldin,* 122 F. Supp. 903 (E.D. Pa. 1954); *United States* v. *Adams,* 115 F. Supp. 731 (D.N.D. 1953).

It is not necessary for us to decide whether it is permissible for a congressman who is a lawyer to represent a client, solely before a government department, in relation to his client's court case and yet not enter his appearance in court. The District Court ruled that such activity would be permissible, if the congressman-lawyer disclosed to the department that he is appearing as an attorney and not as a congressman. This conclusion is as favorable as Johnson was entitled to demand, for in the absence of such disclosure the congressman's appearance would unquestionably violate the plain words of the statute.

3. Edlin and Robinson as Aiders and Abettors

A further objection to the validity of the indictment is pressed by appellants Edlin and Robinson. They say that under the applicable decisions no prosecution can be sustained for aiding and abetting a violation of section 281. Decisions directly in point are in conflict. *United States* v. *Bowles,* 183 F. Supp. 237 (D. Me. 1958), supports the appellants while *May* v. *United States,* 175 F. 2d 994 (D.C. Cir. 1949), is contra, as is *United States* v. *Quinn, supra.*

Relevant, but distinguishable, is *Gebardi* v. *United States,* 287 U.S. 112 (1932), where the Supreme Court held that in a Mann Act prosecution, a woman whose participation is limited to willfully permitting another to transport her in interstate commerce for purpose of prostitution cannot be tried as a conspirator.[23] See also *Nigro* v. *United States,* 117 F. 2d 624 (8th Cir. 1941), and *Lott* v. *United States,* 205 Fed. 28 (9th Cir. 1913).

But the indictment before us is different from those in the above cited cases, and the difference is decisive. This indictment does not charge that Robinson and Edlin aided and abetted in the completion of the offense merely as payers. It goes further. It charges them with a far more active role—"aiding, abetting, counselling, commanding, inducing and procuring." This charges conduct in *addition* to the mere payment of money necessary to complete a violation of section 281.[24]

II. DISCLOSURE OF THE GRAND JURY TRANSCRIPT

Prior to trial, Johnson moved for the production of his grand jury testimony. He supported his motion with an affidavit setting forth his reasons. In part, the affidavit reads:

> "By reason of the length of the interrogation, the intensity at times with which it was conducted and the fact that I was tired physically and mentally from my work in the House of

[23] *Cf. United States* v. *Holte,* 236 U.S. 140 (1915).

[24] In *Bowles* the indictment apparently averred only that the alleged aiders and abettors had paid money. The court's opinion indicated no other acts of assistance. The same is true of *Nigro* and *Lott.* Because of the difference between these cases and ours, we are not required to rule on whether mere payment would be sufficient to sustain a charge of aiding and abetting.

> Representatives and my vigorous campaign for reelection on the Eastern Shore, I do not recollect a considerable part of my testimony."

The District Court denied the motion.

Later, it was disclosed that the Government, before the trial, had permitted a government witness to examine the witness' grand jury testimony. The witness' attorney was accorded the same opportunity, and together they read a volume of the transcript containing the witness' testimony and the testimony of others. The appellants moved the court for the production of all the grand jury testimony on the ground that the Government had breached "the veil of secrecy" usually surrounding grand jury records. This motion also, the court denied. But the court made available to the appellants the volume of testimony revealed by the Government. We find no error in either of these rulings.

The practice of shielding grand jury proceedings from discovery is long-established and rests on sound policy.[25] *Costello* v. *United States,* 350 U.S. 359, 362

[25] Perhaps the most frequently cited justification for the practice is found in *United States* v. *Rose*, 215 F. 2d 617, 628–29 (3d Cir. 1954). There the court summarized the reasons for the rule as follows:

> "(1) To prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammeled disclosures by persons who have information with respect to the commission of crimes; (5) to protect innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt."

(1957); *United States* v. *Johnson,* 319 U.S. 503, 513 (1943). In recent years the Supreme Court has reaffirmed its commitment to this practice. *Pittsburgh Plate Glass Co.* v. *United States,* 360 U.S. 395 (1959), *affirming* 260 F. 2d 397 (4th Cir. 1958); *United States* v. *Procter & Gamble,* 356 U.S. 677 (1958).

Of course, where there is a particularized need for grand jury minutes, it is within the sound discretion of the district court to require their production. *Pittsburgh Plate Glass Co.* v. *United States, supra; United States* v. *Socony-Vacuum Oil Co.,* 310 U.S. 150, 231 (1940). But it is manifest from a reading of Johnson's affidavit that he showed no particularized need. His justification for requesting his testimony is not different from that of any other defendant. If his motion were to be granted then all similar motions would have to be granted automatically regardless of any showing of particularized need. It is difficult to imagine a defendant who could remember all of his grand jury testimony, or who was not emotionally strained when giving it. No special impact on Johnson is made to appear and there is no showing of a threatened injustice from the denial.

Likewise, the fact that the Government, in preparation for the trial, disclosed a volume of the transcript to one of its witnesses does not require the complete abandonment of secrecy. Secrecy is maintained for the benefit of the grand jury and for the betterment of grand jury proceedings. *United States* v. *Smyth,* 104 F. Supp. 283, 304 (N.D. Cal. 1952). Where it becomes necessary to breach the secrecy of the proceedings, it should be done "discreetly and limitedly." *United States* v. *Procter & Gamble,* 356 U.S. 677, 683 (1958). This is what the Judge did. He repaired any possible damage to the defendants and equalized

the situation by permitting them to examine the same testimony which was shown to the government witness.

III. SUFFICIENCY OF THE EVIDENCE

The appellants complain that the evidence is insufficient to support the verdict. To a large extent their contentions merely repeat the arguments made in their attack on the indictment. For example, arguing the insufficiency to support a finding of a section 281 violation, Edlin reintroduces his concept of the statutes,[26] and follows through with the assertion that there was no evidence showing a violation of section 281 as he defines it.

The trial was long, extending over eleven weeks, and the record is mammoth, consisting of 41 volumes of 5600 pages of testimony and many exhibits. We have closely examined this mass of material and have carefully considered the arguments. To restate all of the evidence here would be a useless exercise. The posture of the case, on appeal from a judgment of conviction, requires us to view the evidence in the light most favorable to the Government. For the present purpose, a condensed statement will suffice.

Appellant J. Kenneth Edlin was the dominating force in two Maryland savings and loan associations, First Colony Savings and Loan Association and First Continental Savings and Loan Association. Robinson was Edlin's associate and an officer in each of these associations. According to Martin Heflin, a public relations man, Edlin and Robinson consulted him in April, 1960, about the possibility of having a speech delivered in Congress in behalf of savings and loan institutions. Robinson made an initial draft of such a speech and sent it to Heflin who edited it and in-

[26] See section IA1, *supra*.

serted the words "Mr. Speaker" at appropriate places. Heflin, however, pointed out to Robinson and Edlin that there was no reason to make the speech at that time, and that no one "could be justified in making a speech."

The next month, May, 1960, Heflin, Edlin and Jackson Rains, an accountant for First Colony, met with Congressman Johnson in a Washington restaurant where they discussed the situation of Maryland savings and loan associations. Johnson asked Heflin to send him a resume of the meeting.

On June 30, 1960, Johnson delivered the speech on the floor of the House of Representatives. Johnson testified that the speech was prompted by an unfavorable newspaper article in the May 27, 1960, edition of the Washington Star, and by his own desire to create a political issue for the upcoming congressional election. The newspaper article, however, was a relatively minor one and appeared on an inside page. On cross-examination Johnson admitted that he never had any complaints from his constituents concerning the article or even about savings and loan associations in general, and that no constituent had requested him to make a speech. He also admitted that he made no mention of the speech either in his customary weekly newsletter to constituents or during his campaign.

Johnson also testified that his administrative assistant, Manual Buarque, wrote the speech with the aid of information supplied by Heflin. Buarque testified to the same effect. But other evidence cast grave doubt on the truthfulness of this testimony. Another version of the authorship of the speech came from Accountant Rains, who testified that immediately before or after the speech was delivered Edlin showed him a copy. Rains also testified that on July 4, 1960,

on a plane trip from Maryland to Florida, Robinson and Edlin joked about the authorship of the speech. His testimony was:

> "Everyone was in good spirits. Mr. Edlin and Mr. Robinson were sitting together and they were showing the speech back and forth and saying, jokingly, or facetiously, 'How do you like the speech I wrote,' and the other one would say, 'What do you mean, you wrote it? I wrote it,' and that sort of thing."

Ten days before the speech, Robinson sent Johnson a check for $500. Both men claimed at the trial that it was a campaign contribution, but the evidence showed that when the check was drawn Robinson's bank account was insufficient to cover the sum, and that immediately thereafter he deposited a $300 check from First Colony. First Colony recorded the check as a legal expense.

First Continental Savings and Loan thereafter ordered 50,000 reprints of the speech, underlined in red at significant portions and used to attract depositors.

It is important to note here that as of 1959, Edlin, together with Rains and First Colony, were under indictment in the District Court of Maryland for mail fraud. Rains testified that when Edlin showed him the speech, he reassured him about the pending indictment. According to Rains, Edlin said "[Y]ou see, we have friends on the Hill—we have nothing to fear on our indictment. These people are interested in us and the injustice we have been done."

The testimony of Edlin's secretary, Mrs. Sadie Goldman, was significant. She testified that in the first week of June, 1960, (before the speech) Edlin came into the office in an unusually good mood and told her: "Well, I have made a new contact. There

is no stopping us now. The sky's the limit. We'll have a chain of banks, Sadie, we are going to be rich. Seriously, Sadie, it is a Congressman." She also testified that she later asked Robinson why Edlin was so excited. Robinson asked her if she had ever heard of Congressman Johnson, and when she said he had not, Robinson told her, "You will hear plenty about him now. He is on our payroll. It is costing Ken [Edlin] plenty."

Johnson claimed at the trial that when he made the speech he did not know that an indictment was pending against Edlin. Buarque, the Congressman's administrative assistant, testified that he was aware of the indictment but did not inform Johnson. In closing arguments, the Government maintained that in the context of the events both Johnson's and Buarque's testimony was "incredible."

In addition, Mrs. Goldman said that in July, 1960, she asked Robinson what would happen to her job if Edlin were convicted. Robinson replied, "You have nothing to worry about. The Congressmen are being paid well and Ken [Edlin] will never go to jail. Don't worry."

The evidence is uncontradicted that Congressman Johnson did receive the checks mentioned in the indictment and that when he, together with Congressman Boykin, spoke to the Attorney General and other members of the Justice Department in behalf of Edlin, he did not tell them that he was appearing as an attorney.

Both Robinson and Edlin conferred with Johnson a number of times as to the best approach to the Department. Robinson also prepared an analysis of the indictment for presentation to the Justice Department.

Louis Goldman, an attorney, testified that "Mr. Edlin from time to time would say that he had nothing to worry about the indictment. That his friends on the Hill would take care of it for him and that everything would turn out all right." In response to the question whether Edlin ever referred to costs, Goldman answered: "From time to time Mr. Edlin would say that it is costing him a lot of money and that the cost is eating him up." He also testified that on one occasion, noticing that Edlin looked worried—

> "I asked him what was wrong, and at that time he told me that he was concerned with the fact that Congressman Boykin and Congressman Johnson were not getting anywheres with his indictment; that it was costing him a lot of money. When I asked him what he meant by that, he stopped for a minute, looked at me, and said, 'Forget it.' That was the end of that."

At the trial the appellants claimed that the checks listed in the indictment represented payments to Johnson for valid legal services. It was the Government's contention that to a large extent the alleged legal services were either performed by other attorneys or not performed at all. Our examination of the record leads to the conclusion that there was ample basis, both in the testimony in chief and in cross-examination of Johnson and Robinson, for the jury to believe that the appellants' explanation for the checks was false and that the money was paid to Johnson for making the speech and for using his influence in the Department of Justice.

For example, in his direct testimony Johnson related that he had performed legal services on 305 mortgages to the Cassell Land Company. His testi-

mony was that over $1,600,000 was involved and that his job was to review the mortgages, half of which he found to be defective. To correct the defects, he testified, he and another lawyer drew up one confirmatory mortgage. On cross-examination, he said he could not remember giving this testimony on direct, but repeated that there was a confirmatory mortgage. However, it was shown that before the Montgomery County Grand Jury he swore that he redrafted each of the defective mortgages. Faced with the conflict, he admitted that the grand jury testimony was incorrect. The prosecution then confronted him with a prepared statement he had issued, to the effect that "new *indentures* had to be made to correct the mistakes [in the mortgages]." (Emphasis added). In addition to this obvious conflict, he then acknowledged on cross-examination that he did not prepare the confirmatory mortgage, but that another lawyer did.

Again, in direct testified Johnson had said in reference to a proposed loan to the Savarin Development Corporation: "I did participate in the preparation of the entire loan agreement, the mortgages." Yet he later conceded that he did not mention the loan to the grand jury and, on cross-examination, stated that Robinson actually prepared the loan papers.

Two attorneys who assertedly worked with Johnson testified that they and not Johnson performed the legal work. One, Carrico, testified that shortly before the trial Johnson visited him and asked him to sign a prepared statement concerning Johnson's legal services. Carrico refused because the proffered statement recited that Johnson had visited him to discuss a foreclosure—a statement Carrico would not confirm and his records did not reflect.

Moreover, Johnson introduced into evidence many legal documents on which he had placed penciled no-

tations. On cross-examination, however, a revealing light was shed when it was shown that Johnson had earlier given photostats of these same documents to the FBI and that the photostats were without the penciled marginal notes. Johnson had also furnished the FBI a photostat of a letter he had allegedly written to Robinson discussing the validity of a long agreement. The letter bore a Berlin, Maryland, return address, but its authenticity was impeached by the telephone company's records showing that throughout the day the letter was supposed to have been written in the town of Berlin, on the Eastern Shore of Maryland, Johnson placed long distance phone calls from his Washington office.

Robinson testified that Johnson was on a retainer, yet a statement he made to the FBI did not reflect this. On the contrary, in the FBI report, which he signed, he declared that particular checks were paid to Johnson for specific legal services. The checks, specified in the indictment, aggregating $17,550, which the appellants now claim were for legal services, are far in excess of the $6000 to $7500 claimed by Robinson in his interview with the FBI agent.

This testimony is representative of much more to the same effect. If believed by the jury, as it obviously was, it is more than sufficient to support the jury's verdict.

IV. ALLEGED PREJUDICIAL TRIAL ERRORS

A. FBI AGENTS' TESTIMONY

At trial, the defense insisted that the checks specified in the indictment were payments to Johnson for legitimate legal services. Robinson and Johnson so testified. They both also testified that Johnson was on a retainer from the savings and loan associations controlled by Edlin.

To rebut this testimony, the Government called as a witness the FBI agent who had interviewed Robinson on January 11, 1962. In the course of the interview the agent made notes, then returned to his office and, from these notes, dictated a narrative statement which was subsequently typed and presented to Robinson. Robinson read, corrected and signed the statement. A copy was given to him.

The agent testified that in the interview Robinson made no mention of any retainer fee having been paid to Johnson. He also testified that after the statement was signed Robinson added that the total fees paid to Johnson were between $6000 and $7500. If believed by the jury it meant that the appellants' evidence that Johnson was on a retainer was probably false. The suggested inference is that if he were on a retainer, as now claimed, Robinson would have mentioned this fact to the agent. Moreover, the $6000 to $7500 testified to by the agent as the sum Robinson claimed to be the total legal fees, was far below that claimed by the appellants at the trial.

On cross-examination, the agent stated that after he dictated Robinson's statement he destroyed the interview notes in accordance with the then customary FBI procedure. The completed and signed statement of Robinson, which was made part of the agent's report, was retained in the FBI files. The agent further testified that while he was not aware at the time of the interview that Robinson was being investigated, he did recognize the possibility that Robinson might be called as a witness in a prosecution against Johnson. Robinson moved to strike the agent's entire testimony for the reason that the original notes of the interview had been destroyed. The court denied the motion and ruled

the evidence admissible against Robinson, though not against Edlin.

Another FBI agent testified to an interview he had with Johnson's administrative assistant, Manuel Buarque. This agent's testimony was offered in rebuttal of certain testimony given by Buarque as a defense witness. At the interview, the agent made notes from which he later prepared his report. Buarque did not sign the report. Johnson's counsel moved that the agent's testimony be stricken because of the destruction of the notes. Again the trial court denied exclusion. Buarque, like Robinson, was furnished a copy of the report.

Appellant Robinson argues that the destroyed notes were a produceable "statement" under the Jencks Act, 18 U.S.C.A. § 3500, and that their willful destruction by the FBI required the agents' testimony to be stricken.[27] If the notes can qualify as a "statement," a serious question arises.

This is not the first time that a court has been called upon to consider the effect of the destruction of FBI interview notes. *Campbell* v. *United States,* 373 U.S. 487 (1963); *Killian* v. *United States,* 368 U.S. 231 (1961); *Ogden* v. *United States,* 323 F. 2d 818, 820–21 (9th Cir. 1963); *United States* v. *Greco,* 298 F. 2d 247 (2d Cir. 1961). Each time the problem has arisen the FBI has claimed that the notes were de-

[27] 18 U.S.C.A. § 3500(d) reads as follows:

"(d) If the United States elects not to comply with an order of the court under paragraph (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared."

troyed as part of FBI routine. This is really not a satisfactory answer. Where the agent testifies to matter he claims not to be in the notes and the defendant insists on a different version, an issue arises which may not be satisfactorily resolved in the absence of the original notes. If the notes were available, they might confirm or refute one version or the other. One of the purposes of both the *Jencks* decision and the Jencks Act is to afford the defense an opportunity to impeach witnesses. *Palermo* v. *United States,* 360 U.S. 343 (1959); *United States* v. *Wenzel,* 311 F. 2d 164, 171 (4th Cir. 1962). The destruction of interview notes does not advance this purpose. of course, a district court may find as a fact that the notes were not a substantially verbatim record, or that they were accurately copied into a report and then destroyed in good faith, but the necessity for inquiries along this line can be avoided by the preservation of notes until after the trial. Eliminating uncertainty may serve the interest of the Government no less than the defendant.

However this may be, as we view the Jencks Act, the notes in question do not qualify either as a "statement" or as a "report" as these terms are defined in the Act. Subsections (a), (b) and (c) are pertinent.

> "(a) In any criminal prosecution brought by the United States, *no statement* or report in the possession of the United States which was *made by a Government witness* or prospective Government witness (other than the defendant) *to an agent of the Government* shall be the subject of subpena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.
>
> "(b) *After a witness called by the United States has testified* on direct examination, the court shall, on motion of the defendant, order

the United States to produce *any statement (as hereinafter defined) of the witness* in the possession of the United States which relates to the subject matter as to which the witness has testified. * * *

* * * * *

"(e) The term 'statement,' * * * in relation to any *witness called by the United States* means—

(1) a written *statement made by said witness* and signed or otherwise adopted or approved by him; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement *made by said witness to an agent of the Government* and recorded contemporaneously with the making of such oral statement." (Emphasis added.)

The italicized portions require that the obtainable "statement or report in the possession of the United States" must be made *by the witness,* and the witness must be a *government witness.* By its terms, the Act does not cover statements made either by a defendant or by a defense witness.

The FBI agents' reports were within the Jencks Act because in each instance the "report * * * was made by a Government witness * * * to an agent of the Government." *Holmes v. United States,* 271 F. 2d 635 (4th Cir. 1959). Copies of these verified statements were, as heretofore shown, in the defendants' possession. Assuming that the notes the agents made when interviewing Robinson and Buarque were "substantially verbatim recital[s] of oral statement[s]," they were at most statements of Robinson and Buarque, not statements "made by a Government witness."

Both FBI agents testified to their present recollection of the interviews. It was for the jury to consider the reliability and weight of their testimony, as compared to the testimony given by Robinson and Buarque.

B. ALLEGED COMMENT ON EDLIN'S FAILURE TO TESTIFY

Edlin claims that the prosecutor improperly commented on his failure to take the stand. The incident referred to occurred at the end of the Government's closing summary to the jury. After pointing out asserted inconsistencies in the appellants' positions, the prosecutor spoke these words:

> "Members of the Jury, the defendant Edlin has presented no defense in this case. He has presented no evidence to contradict the charges against him. He has produced no evidence to deny numerous statements made by many, many government witnesses. He has produced no evidence to deny the testimony of numerous witnesses of his various activities which clearly indicate beyond any doubt, Members of the Jury, his guilt of the charges in this indictment."

In *Davis* v. *United States,* 279 F. 2d 127 (4th Cir. 1960), a similar argument was presented. The answer we gave applies with equal force here:

> "The United States Attorney's argument cannot be said to have constituted a forbidden comment on the failure of the defendants to testify. He merely reviewed certain testimony and added, truthfully, that there was no evidence in contradiction."

The prosecutor did not draw improper attention to Edlin's refusal to testify. He merely pointed out that the defense did not introduce evidence to con-

tradict certain of the prosecution's witnesses. Edlin was not the only person who could have refuted the Government's witnesses. *Leathers* v. *United States,* 250 F. 2d 159, 165 (9th Cir. 1957). The prosecutor addressed himself to the absence of anything in the record to contradict the Government's version of the case. Under these circumstances his comment was not improper. *Davis* v. *United States, supra; Garcia* v. *United States,* 315 F. 2d 133, 137 (5th Cir. 1963).

C. ALLEGED "TOTALITY OF PREJUDICE"

Edlin launches a more general attack on the trial, claiming that evidence admitted against one or more of his co-defendants constituted "in its totality" prejudice as to him. This amounts to no more than a continuation of his argument, dealt with earlier, that conspiracy cases in general often produce evidence against one defendant which may prove prejudicial to his co-defendant.

We have closely examined the numerous references to the record and find that they do not show the claimed "totality of prejudice." The record attests the close and careful attention the trial judge gave to questions of the admissibility of evidence. Wherever necessary he instructed the jury that evidence admissible only against certain-appellants should not be considered against the others. We have earlier in this opinion pointed out the dangers inherent in conspiracy trials, but as long as Congress authorizes prosecutions for conspiracy and the Supreme Court adheres to its holdings that the Constitution does not proscribe them, we must rely in large measure on the alertness of district judges to protect the interests of the individual defendants by properly cautioning the jury as to the purpose and effect of particular items

of testimony. Indeed, the problem is potentially present whenever two or more defendants are jointly tried on any charge. The District Judge showed himself sensitive to the delicacy of his function as governor of the trial, and whenever the situation called for a specific instruction to the jury, appropriate instruction was given.

Where the trial judge finds that a defendant has been unduly harmed or his trial made unfair, he should in the interest of justice grant a new trial. *United States* v. *Decker,* 51 F. Supp. 20, 25–26 (D. Md. 1943). Upon full consideration, we cannot say that Edlin had an unfair trial. In the particular rulings, and in the totality of the trial we perceive no unfairness.

D. INSTRUCTIONS TO THE JURY

Each of the appellants presses the contention that certain portions of the court's charge to the jury were erroneous. First, it is said that the court committed reversible error in refusing to instruct the jury to acquit unless they found that the alleged legal services performed by Johnson were a "sham and pretense." The court refused the tendered instruction "because there is no requirement on the Government to prove sham and pretense."

The Government did not claim, nor was it necessary for it to show, that Johnson performed absolutely no legal services. The appellants' requested instruction, if granted, was susceptible of being understood by the jury as requiring it to find a set of facts beyond that charged by the Government. The court dealt with the subject adequately and avoided the possibility of misunderstanding when it told the jury that receipt of the compensation was illegal if it was, "in whole or in

substantial part" for services rendered before the Department of Justice. This was unquestionably appropriate to direct the jury to the issue impartially. *United States* v. *Burton,* 202 U.S. 344 (1906).

The appellants also contend that the District Court erred in refusing their requested instruction on circumstantial evidence. This would have required the jury to disregard all circumstantial evidence unless it excluded every reasonable hypothesis except guilt. In *Holland* v. *United States,* 384 U.S. 121, 139–40 (1954), the Supreme Court explicitly rejected this formulation. Justice Clark, who wrote for a unanimous Court, emphasized that "where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect [citations omitted]." Here the court did instruct on reasonable doubt, using the formulation approved by the Supreme Court in *Holland.* Refusal of the tendered instruction was not error. *United States* v. *Lawrenson,* 298 F. 2d 880, 884 (4th Cir. 1960); *Milanovich* v. *United States,* 275 F. 2d 716, 721 (4th Cir. 1960), *rev'd on other grounds,* 365 U.S. 551 (1961).

Edlin requested an instruction to the effect that the jury could consider whether his actions were based upon the advice of counsel in determining his intent and good faith. *United States* v. *Painter,* 314 F. 2d 939, 943 (4th Cir. 1963). The Judge's charge incorporated the substance of the requested instruction, and refusal to adopt Edlin's very words was not error. Other requested instructions were rejected, but we find no error, because insofar as they asserted valid propositions of law they were in essence embodied in the charge.

V. CONCLUSION

Though we find the evidence sufficient to support a guilty verdict on all counts, the invalidity of count one as applied to Johnson was obviously prejudicial to his right to the unbiased consideration of the jury on the remaining counts. Many of the events testified to at the trial related only to the speech. It was introduced into evidence and its authorship, contents, motivations and accuracy made the subject of extensive inquiry. The conclusion is unavoidable that this mass of evidence and comment, all inadmissible against Johnson, infected the jury's consideration of his innocence or guilt under the conflicts of interest counts. The judgment against Johnson is therefore vacated and the case remanded for a new trial on the counts charging violations of 18 U.S.C.A. § 281. As to Edlin and Robinson, the convictions are affirmed.

Judgment as to Johnson vacated and a new trial ordered with instructions; judgment as to Edlin and Robinson affirmed.

APPENDIX B

JUDGMENT

Filed and Entered September 16, 1964

United States Court of Appeals for the Fourth Circuit

No. 9223

UNITED STATES OF AMERICA, APPELLEE

vs.

THOMAS F. JOHNSON, J. KENNETH EDLIN, AND WILLIAM L. ROBINSON, APPELLANTS

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

This cause came on to be heard on the record from the United States District Court for the District of Maryland, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court as to Thomas F. Johnson appealed from, in this cause, be, and the same is hereby, vacated, and that the cause be, and the same is hereby, remanded to the United States District Court for the District of Maryland, at Baltimore, with directions to set aside the verdict and grant a new trial in accordance with the opinion of the Court filed herein; and that the judgments of the said District Court as to J. Kenneth Edlin and William L.

Robinson appealed from, in this cause, be, and the same are hereby, affirmed.

(S) SIMON E. SOBELOFF,
Chief Judge, Fourth Circuit.

(S) CLEMONT F. HAYNSWORTH, JR.,
United States Circuit Judge.

(S) JOHN D. BUTZNER, JR.,
United States District Judge.

U.S. GOVERNMENT PRINTING OFFICE: 1964

FILED
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JOHN F. DAVIS, CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 25

UNITED STATES OF AMERICA, *Petitioner*,

v.

THOMAS F. JOHNSON.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THOMAS F. JOHNSON IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 695

UNITED STATES OF AMERICA, *Petitioner*,

v.

THOMAS F. JOHNSON.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THOMAS F. JOHNSON IN OPPOSITION

Opinions Below

The Opinion of the Court of Appeals (Pet. App. 12-22) is reported at 337 F. 2d 180. The Opinion of the District Court is reported at 215 F. Supp. 300.

Jurisdiction

The judgment of the Court of Appeals was entered on September 16, 1964. On October 19, 1964, the Chief Justice extended the time for filing a Petition for a Writ of Certiorari to and including November 15, 1964. The Petition for a Writ of Certiorari was filed on November 16, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Question Presented

Whether the provision of Article I, Sec. 6 of the Constitution that speech or debate in the Congress shall not be questioned elsewhere permits the government to make a criminal charge that a member of Congress collaborated with others in the preparation of a speech in the House of Representatives, made the speech there for their benefit and received a gift for doing so.

The constitutional question presented by the evidence at the trial was this: Does the Speech and Debate Clause permit the government to contend that a member of Congress was motivated, or influenced in whole or in part, in making a speech in the House of Representatives by a contribution made shortly before the speech to his political campaign for re-election.[1]

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[1] If the Writ is granted, Respondent wishes to reserve the right to argue certain important questions which were raised below but were not decided in favor of Respondent. If any one of them is determined favorably to Respondent, the reversal by the Court of Appeals of Respondent's conviction would be sustained. These questions are: (1) whether, in enacting the 1866 Conspiracy Statute (18 U.S.C. Sec. 371), Congress intended that it should apply to a charge of conspiracy with respect to the making of a speech in the House of Representatives for a gratuity, (2) whether the conspiracy charge was fatally defective because (a) its alleged unlawful objects were so vague, indefinite and all pervasive they did not inform Respondent of the nature of the accusation in conformity with the Sixth Amendment and the Due Process Clause of the Constitution and (b) it did not allege any false statement or misrepresentation, (3) whether the F.B.I. may continue its procedure to circumvent the Jencks Act by destroying original witness-interview notes made by an F.B.I. agent, i.e., whether such notes should be deemed a "statement" or "report" under the Jencks Act, (4) whether in a criminal case the government may breach the seal of secrecy of grand jury testimony by permitting its own witness or witnesses to read grand jury testimony without entitling a defendant to access to the transcript of all grand jury testimony, (5) whether the instruction of the District Judge to the jury as to criminal intent with respect to the substantive counts was so inadequate Respondent's rights were not protected and (6) whether vilification of Respondent by government counsel in summation to the jury violated the teaching of this Court in *Berger v. United States*, 295 U.S. 78, 88.

Constitutional and Statutory Provisions Involved

Article I, Section 6 of the United States Constitution provides in part:

> The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

18 U.S.C. 371, provides in pertinent part:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

18 U.S.C. 281, which was repealed after the alleged commission of the acts involved in this case, provided in part:

> Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

Statement

The Statement of the government in its Petition requires amplification.

An object of the Count I conspiracy charge was alleged to be the deprivation of the right of the government to the faithful services of Respondent as a member of the House of Representatives, "uninfluenced" by payments of money by other defendants, "in relation to matters pending in the House of Representatives" and "before the Department of Justice" (R. App. 5).[2] At the trial there was no evidence that the speech of Respondent made in the House of Representatives on June 30, 1960, had any relationship to any pending bill or other matter pending in the House or to any matter before the Department of Justice.[3]

At the trial almost all of the important testimony with respect to events in the year 1960 related to the speech of Respondent. We estimate that over 60% of all testimony with respect to Respondent involved an inquisition into the motives and purposes of the speech, its authorship, content, and relationship, if any, to a check in the amount of $500.00 dated June 20, 1960, sent by Robinson to Respondent.

It was undisputed that Edlin and Robinson, who were associated with two Maryland Savings and Loan Associations one of which (First Colony) was located at Elkton in the Congressional District of Respondent, hoped that a member of Congress might deliver a speech defending state savings and loan institutions from attacks made upon them by the federal savings and loan association (R. App.

[2] "R. App." refers to Respondent's Appendix in the Court of Appeals.

[3] The visits of Respondent to Justice, the basis of the substantive counts of the indictment, did not occur until after March 15, 1961.

182-184). Edlin told Respondent in May, 1960, of these allegedly unjustified attacks (R. App. 186, 197). On May 27, 1960, Respondent was shown a copy of a newspaper article in the Washington Evening Star of May 27, 1960, characterizing all Maryland state savings and loan associations as "phonies", as evidence of the mistreatment of the independent savings and loan associations (R. App. 186). Heflin, a government witness who was a public relations man for a small Institute of Independent Savings and Loan Association, testified that he told Respondent it "was categorically unfair. I still think so" (R. App. 189, 201). Respondent turned Heflin over to his Administrative Assistant and Heflin supplied him with some facts and figures for a draft of the speech. Both Heflin and the Administrative Assistant testified that it was prepared by the latter (R. App. 189, 190, 200, 277, 479).

The speech in the House of Representatives criticized the article in the Evening Star and defended Maryland state savings and loan associations from the attack made upon them in that article. The speech contained no reference to First Continental Savings and Loan Association or First Colony Savings and Loan Association, with which other defendants were associated, or to any other named association (R. App. 931).

The letter of Robinson to Johnson enclosing the $500.00 check of June 20, 1960, made clear that it was a contribution to Johnson's 1960 political campaign for re-election (R. App. 565). The check was endorsed by Johnson to his campaign treasurer, was deposited in the account of the treasurer and was used as, in the case of other campaign contributions, for advertising, radio, television, etc., in support of the 1960 candidacies of John F. Kennedy, Lyndon Johnson and Respondent (R. App. 246-252, 567). The contribution was

listed in the official report of the treasurer filed within 30 days of the November 1960 election. Although Robinson was reimbursed for his check by First Continental Savings and Loan Association, there was no evidence contradicting the testimony of Respondent and Robinson that Robinson had not told Respondent he had been reimbursed for his campaign contribution (R. App. 752).

No one testified in this case that there was an understanding, if Respondent would make the speech, he would receive this campaign contribution or that he had agreed to make the speech for the campaign contribution. Respondent and Robinson each testified to the contrary (R. App. 570, 751, 752, 783).

In holding that there was sufficient evidence for the jury that the $500.00 check of Robinson represented compensation for the speech, the Court of Appeals relied heavily upon jesting statements attributed to Edlin and Robinson, out of the presence of Respondent, each claiming authorship of the speech (Pet. App. A. p. 44). The Court overlooked the fact that these hearsay statements were *not* admitted against Respondent (Tr. 421, 422). The Court of Appeals also relied upon other hearsay statements attributed to Robinson and Edlin out of the presence of Respondent, stating, or intimating, that Respondent was on their payroll (Pet. App. A. pp. 44-45). These statements were not admissible against Respondent under any known legal theory. In a conspiracy case an exception to the hearsay rule is only made when the statement is in furtherance of the object of the conspiracy *and* it has first been shown, by independent evidence, that the defendants combined together in a common enterprise. These statements out of the presence of Respondent were not made in furtherance of any future object and there was no independent

evidence that he combined with others in a common enterprise.

Government counsel argued to the jury that Respondent must have been motivated or influenced by the $500.00 political campaign contribution in deciding to make the speech in the House of Representatives (Tr. 5819-5830, 6200-6205) and on appeal in the Court of Appeals the brief for the government asserted "the government certainly did not have to prove that the Congressman's *sole* motive in giving the speech was to receive compensation or to aid Edlin or Robinson . . ." (Govt. Brief p. 42). Thus it was the position of the government that, under this amorphous conspiracy charge, it was not necessary for the government to establish that Respondent was employed, or even consciously agreed, to make his speech for the campaign contribution; all that was necessary was for the testimony to indicate that Respondent may have been influenced by the campaign contribution made 10 days before the speech or by a wish to aid Edlin or Robinson. If a jury could be permitted to speculate whether the gift of a campaign contribution may have influenced a senator or a representative in making a speech in the Congress, members of the legislative branch of the government would be placed at the mercy of the executive power.

Reasons for Denying the Writ

The unanimous opinion of the Fourth Circuit holding unconstitutional the Count of the indictment, charging that Respondent, a member of Congress, conspired to defraud the United States by collaborating with others in the preparation of a speech and making the speech in the House of Representatives for a gift followed the opinions of this Court in *Tenney v. Brandhove*, 341 U.S. 367 (1951) and *Kilbourn v. Thompson*, 103 U.S. 168 (1881). The Fourth

Circuit decision is not in conflict with that of any other Circuit nor is it in conflict with any opinion of this Court. Indeed, there is no decision anywhere in the United States or in England at variance with the opinion of the Court of Appeals.

Nor has the Court of Appeals decided an important question of federal law which has not been settled. The question presented was of great general importance in English Constitutional history until 1689 when it was then settled in England by the Bill of Rights. The question was of importance in the United States in 1789; it was then settled by the plain, unambiguous, unqualified, definitive declaration of Article I, Section 6 that speech in the Congress "shall not be questioned" elsewhere. If there could be any doubt as to the meaning of the constitutional prohibition, designed to secure legislative freedom, it was authoritatively determined by this Court in *Kilbourn* and again in *Tenney*.

1. Since the Bill of Rights of 1689 when the principle of legislative liberty was first established, the Courts of England have consistently held that no criminal or civil charge may be maintained in the Courts against a member of Parliament with respect to speech or debate there and the House of Commons and the House of Lords alone can hear, convict and impose sanctions with respect to alleged improper or criminal speech and debate.[4]

2. In America even before the Federal Constitution, the privilege as to legislative freedom of speech was deemed so essential that it was embodied in the Articles of Con-

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[4] *Ex parte Wason*, 4 Q.B. 573 (1869); Lord Denman in *Stockdale v. Hansard*, 9 Ad. & E. 1, 113: "whatever is done within the walls of either assembly must pass without question in any other place." Lord Chief Justice Colerige in *Bradlaugh v. Gossett*, 12 Q.B.D. 271, 275: "what is said or done within the walls of Parliament cannot be inquired into in any court of law."

federation of 1777; in the Maryland Declaration of Rights of 1776; in the Constitution of the State of Massachusetts in 1780; and in the Constitution of New Hampshire in 1784. At the Federal Constitutional Convention the pertinent clause of Article I, Section 6 was adopted without opposition. The significance accorded the clause is best indicated by the comment of Mr. Justice Story in his *Commentaries on the Constitution* (p. 630):

> The next great and vital privilege is the freedom of speech and debate, without which all other privileges would be comparatively unimportant or ineffectual. This privilege also is derived from the practice of the British Parliament, and was in full exercise in our colonial legislation, and now belong to the legislation of every State in the Union as matter of constitutional right.

Since the Constitution of almost every state of the Union contains a provision comparable to the Speech and Debate Clause of Article I, Section 6, no state court has entertained such a charge as that involved here.

3. Whether Article I, Section 6 should be narrowly interpreted to insure that it does not protect alleged criminal conduct with respect to speech or debate in the Congress, as the Petition contends, is not unsettled. This constitutional privilege has been universally interpreted liberally to achieve its fundamental purpose and no American or English Court has ever attempted to qualify, condition or limit its full constitutional scope. This Court unanimously and authoritatively determined in *Kilbourn* and in *Tenney* that this clause of Article I, Section 6 must be liberally interpreted.

4. The Petition asserts that the criminal charge in this case did not "question" the speech of Respondent in the

House of Representatives but his antecedent conduct in allegedly agreeing to accept a gratuity for the speech (Pet. pp. 7, 8). This contention does not present an undetermined question because it necessarily implies that it is constitutionally permissible for the government to impeach the motivation of speech in the Congress. The motivation of a speech is so closely related to its content, they are of course inseparable because no words are spoken or written without purpose. In *Tenney*, decided as recently as 1951, this Court rejected this very contention of the government that the constitutional prohibition of Article I, Section 6 did not apply to official acts of members of the legislative branch when the government charged an unworthy, dishonest, corrupt, or criminal purpose. The Court pointed out that the constitutional principle would be of little value if the elected representatives of the people could be subjected to the burden of a trial or to the hazards of a jury's speculations as to motive.

The Petition postulates a theoretical situation in which a member of Congress agrees to make a venal speech but does not make it and suggests that in that situation no speech would be impeached (Pet. p. 8). This may or may not be so but in this case the government did impeach a speech made in the House of Representatives in a clear and definitive way and, if the Speech and Debate Clause did not bar such a criminal charge, the Clause would be sterilized from any value or significance.

5. The notion of the Petition that judicial privilege involves an "analogous area" (Pet. p. 8, 10) is not correct. There is no analogy between legislative and judicial privilege because Article I, Section 6 establishes the House and the Senate as the exclusive tribunals to hear, convict and impose sanctions with respect to alleged improper or criminal speech and debate in the Congress.

6. The asserted apprehension of the government that the effect of the decision of the Court of Appeals casts doubt upon the validity of the anti-bribery statutes (Pet. p. 7) is without substance. It was not the decision of the Fourth Circuit which casts doubt upon the validity of these statutes but the decisions of this Court in *Kilbourn* and in *Tenney* that the speech and debate provision must be deemed to apply not only to speech and debate in the legislative branch of government but to all official acts of its members.

The federal bribery statutes make it an offense for one to give to a member of Congress, and for a member of Congress to accept, a bribe to influence "his act, vote or decision" "on any question, matter, cause or proceeding which may at any time be pending in either House" (18 U.S.C. 204; 18 U.S.C. 205). The government did not charge Respondent with violating either of these statutes or with conspiring to do so. Since this case concerns the entirely different charge of conspiracy to defraud the United States in violation of 18 U.S.C. Sec. 371, if the Writ were granted, this Court would have no opportunity to determine the validity of the anti-bribery statutes. Any consideration by the Court of their validity would violate the Court's most frequently repeated canons of constitutional decision. A constitutional question is not decided when it is not necessary for the Court to do so; the Court will not permit a litigant, who is unable to show an interest in the outcome, to raise the question and the Court will not decide a constitutional question which upon the facts is not presented for decision.

The government could not have charged Respondent with violating the federal bribery statutes, or conspiring to do so, because by their terms they are limited to *official* action, vote or decision with respect to *pending* matters.

The speech which Respondent made in the House of Representatives consisted of brief personal remarks unrelated to pending legislation or to any other matter in the House. His remarks expressed his personal view that an article in the Washington Evening Star disparaging all Maryland State savings and loan associations was unjust and unfair. They could not be deemed a vote, decision or any other official act pertinent to the business of the House. Indeed, his remarks were as unofficial as if contained in a speech made in Baltimore.

7. Although this Court conclusively determined the issue in *Kilbourn* and *Tenney*, the Petition asks the Court to do so again "so that Congress may establish such machinery as is appropriate to deal with such matters" (Pet. p. 7). Congress needs no instruction as to its exclusive authority in the limited area of speech and debate for it has zealously guarded it by excluding speech and debate from the anti-bribery statutes. As recently as 1954 the Senate appointed a special committee to hear charges of improper speech and conduct against a Senator of Wisconsin. The Senate voted to sustain findings of the committee and publicly humiliated and disgraced the Senator by censoring him.

8. The Petition claims that a criminal charge against a member of Congress with respect to speech and debate would not interfere with legislative independence (Pet. p. 9), and that a judicial tribunal is a better forum for determining guilt or innocence than a legislative tribunal (Pet. p. 10). These assertions of the government suggest that the constitutional prohibition embodies an unwise, unsound public policy. The argument is one that would have been appropriate in the Constitutional Convention of 1789;

it was foreclosed by Article I, Section 6 and has been repudiated by this Court in *Kilbourn* and later in *Tenney*.

9. The Petition is forced to rely upon remote provincial cases which have little relationship with that at bar (Pet. p. 10). *Rex v. Boston*, 33 C.L.R. 386 (N.S.W) (1923) charged a conspiracy by a member of a legislative assembly of New South Wales, Australia, and others to wrongfully induce the Province to acquire certain private property. Speech or debate of the legislative member was not involved. In *Regina v. White*, 13 S.C.R. (N.S.W.) 322 (1875) one was charged with offering a bribe to a member of the Legislative Assembly of New South Wales for his vote for a pending bill. The issue of Parliamentary privilege was not raised. Justice Faucett of the Supreme Court of New South Wales was so unaware of the Speech and Debate clause of the Bill of Rights that, in holding an offer to bribe a legislator was a criminal offense, he relied upon the fact that members of the House of Commons had been convicted *by the House* and expelled for accepting bribes.

In *Regina v. Bunting, et al.*, 7 O.R. 524 (Ontario, 1885) (G.A. App. 29-57) certain members of the provincial assembly were charged with conspiring to vote for certain bills in consideration of bribes. The Court held this was a criminal offense cognizable by the Court. Although no speech was involved, as here, Justice O'Connor wrote a vigorous dissent (G.A. pp. 46-57) concluding that the psychological state of mind of legislative members, their opinions and motives, could not be inquired into; and interference by the Courts would be an invasion of the independence of the legislative body and its members to the detriment of public liberty.

Conclusion

For the reasons stated, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

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December, 1964

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 25

UNITED STATES OF AMERICA, PETITIONER

v.

THOMAS F. JOHNSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals is reported at 337 F. 2d 180. The opinion of the district court is reported at 215 F. Supp. 300.

JURISDICTION

The judgment of the court of appeals was entered on September 16, 1964. On October 19, 1964, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including November 15,

1964 (a Sunday). The petition was filed on November 16, 1964, and was granted on January 25, 1965 (379 U.S. 988). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Constitution, particularly Article I, Section 6, providing that "for any Speech or Debate in either House," no member of Congress shall "be questioned in any other Place," bars criminal prosecution of a Congressman for accepting a bribe to make a speech in Congress.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 6, of the United States Constitution provides in part:

> The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

18 U.S.C. 281, which was superseded by more comprehensive legislation subsequent to the commission of the acts involved in this case, provided in pertinent part:

> Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

18 U.S.C. 371 provides in pertinent part:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

On April 1, 1963, an eight-count indictment was returned in the United States District Court for the District of Maryland charging in count one that respondent and Frank W. Boykin, then Congressmen, conspired with two others between April 1, 1960, and

December 31, 1961, to defraud the United States of its right to have the Congressmen's duties performed free from corruption and uninfluenced by payments of money and to have the business of the Department of Justice conducted impartially. It was charged that, as part of the conspiracy, both Congressmen were paid by the other defendants to try to persuade the Department of Justice to postpone the trial of, and ultimately dismiss, mail fraud charges pending against persons connected with the First Colony Savings and Loan Association and that respondent was paid to make a speech in Congress defending the operation of independent savings and loan associations (App. 1-19).[1] The seven other counts (App. 19-30) charged that respondent, aided by the other defendants, was paid to intercede with Justice Department officials to persuade them to postpone the mail fraud trial and dismiss the pending indictment, in violation of the conflict-of-interest statute then in effect, 18 U.S.C. 281 (see *supra*, pp. 2-3). Respondent's motion to dismiss the indictment on various grounds, including the contention that count one was barred by the speech or debate privilege of Article I, Section 6 (*supra* p. 2), was denied by the trial court (App. 48, 52-56). After a trial by jury, all defendants were convicted on all counts (App. 42-43). Respondent was sentenced to imprisonment for a concurrent period of six months on each count and was fined $5000 on the conspiracy count (App. 44-45).

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[1] "App." refers to the appellants' appendix in the court below, filed as Volumes 1 and 2 of the record in this Court. "R." refers to Volume 3 of the record filed in this Court. "Tr." refers to the Trial Transcript.

In pertinent part, the government's evidence showed that, in 1960 and 1961, defendant J. Kenneth Edlin, the dominant figure in two Maryland savings and loan institutions (First Colony and First Continental), was under indictment for mail fraud in connection with activities of First Colony (App. 205-206, 265-266). In April 1960, Edlin and an associate, defendant William L. Robinson, consulted with Martin Heflin, a public relations counselor, on the desirability of having a speech delivered in Congress on behalf of independent savings and loan associations (App. 180-184). After a meeting with respondent in May, Heflin and Robinson supplied material for a proposed speech to respondent's administrative assistant (App. 189-190; cf. R. 4-5). In the first week in June, Edlin told his secretary that he had a Congressman as a "new contact," as a result of which, "we are going to be rich" (App. 161). At about the same time, Robinson informed Edlin's secretary that Congressman Johnson was "on our pay roll" (App. 162). On June 20, 1960, Robinson sent respondent a check for $500 (App. 250-251, 564-565). Ten days later, respondent delivered a speech in Congress defending independent savings and loan associations (App. 931-937).[2] Either immediately before or immediately

[2] The only official copy of the speech, contained in the Congressional Record, that was introduced at the trial was placed in evidence by respondent (App. 470). Earlier in the trial, the government had introduced, without objection, one of the reprints paid for by First Continental, for the purpose of showing that parts of the text were underscored for use in encouraging prospective depositors (App. 258-260).

after the speech was made, Edlin displayed a copy of its text, commenting that there was no reason to fear the mail fraud indictment since "we have friends on the Hill" (R. 4). The only reprints made of the speech were purchased by First Continental and were used to induce prospective savers to deposit money in Edlin's savings and loan associations (App. 205-206, 257-264; R. 11-12).

Between August 1960 and March 1961, respondent received $3700 in checks from Robinson (Tr. 197-199, 716-728, 957-958). Between March and October 1961, respondent and Congressman Boykin visited officials of the Department of Justice to discuss the mail fraud charges pending against Edlin in an effort to convince the Department that the indictment should be dismissed (App. 356-358, 366-389, 837-846). During this period, respondent received over $19,000 from Robinson and First Continental (R. 5-11, 15-22).

In his defense, respondent testified that he delivered the speech in response to a newspaper article and in order to create an issue for a forthcoming congressional campaign (App. 567-569). He said that the $500 check he received in June 1960 was a campaign contribution (App. 565-569; R. 84-85) and that the other payments were for the performance of various legal services (App. 575-747; R. 93-193).

The court of appeals found "the evidence sufficient to support a guilty verdict on all counts" (R. 326). Nevertheless, it reversed respondent's conviction on count one on the ground that the speech or debate clause of Article I, Section 6 bars a criminal prosecution of a Congressman for accepting money to make

a speech in Congress. The court deemed this interpretation necessary in order "to promote the independence of all congressmen" and "[t]o avoid restraint on free expression on the floor of either House" (R. 304). It ruled in this connection "that whenever the motivation for making a speech is called into question, the privilege applies," and "that the Constitution has clothed the House of which [respondent] is a member with the sole authority to try him" (R. 299, 303). In reaching this conclusion the court of appeals (R. 301) agreed with the district court (App. 56) that, for the purpose of determining the applicability of Article I, Section 6, there is no significant difference between a charge under the conflict-of-interest law that a Congressman accepted a bribe to make a speech and a charge, as here, that a Congressman made a speech for money as part of a conspiracy to defraud the United States of its governmental functions in violation of 18 U.S.C. 371 (*supra* p. 3).

The court vacated respondent's conviction on the substantive counts and remanded for a new trial on the ground that evidence relating to the speech prejudiced his trial on these counts. The convictions of the other defendants were affirmed.

ARGUMENT

INTRODUCTION AND SUMMARY

More than one hundred and ten years ago, Congress made it a crime for a member of Congress to accept a bribe to influence his vote or decision on any matter pending before him in his official capacity. Although it was understood that the speech or de-

bate clause protected voting and other official conduct, no member of Congress, either then or at the time of later similar enactments, evinced concern that the enforcement of such legislation would impinge upon the freedom of legislative speech and debate. Yet the court below reversed respondent's conviction on the supposition that his prosecution for taking a bribe in exchange for an official act would have an inhibiting effect on freedom of speech in Congress.

In our view, the court below, not Congress, misconstrued the constitutional provision. The scope of the speech or debate clause is dictated by its purpose —to promote a free legislative process by relieving Congressmen of apprehension over civil or criminal liability arising out of the performance of their public duties. While this purpose requires the immunization of legislators from liability founded upon the content of their official speech, it does not justify immunity from prosecution for the antecedent unlawful act of taking a bribe to make a speech in Congress— an act which is an offense whether or not the speech is ever given. This critical distinction between liability based on the content of legislative speech and liability based on accepting a bribe is borne out by decisions in the analogous area of judicial privilege and is sustained by analysis of the historical background of the speech or debate clause itself. Not only is the expansive immunity granted by the decision of the court below unnecessary to satisfy the purpose and history of that constitutional provision; it is opposed to the basic concept of responsive rep-

resentative government. The Constitution does not require that only the House of which a faithless legislator is a member may punish him for taking a bribe in connection with his official duties. As we have noted, Congress itself has never doubted that it could make that act a crime, triable in the courts, subject to all the constitutional safeguards which surround a jury trial.

I.

THE SPEECH OR DEBATE CLAUSE DOES NOT RENDER CONGRESS IMPOTENT TO PROVIDE FOR JUDICIAL SANCTIONS AGAINST A CONGRESSMAN WHO ACCEPTS A BRIBE IN EXCHANGE FOR A LEGISLATIVE SPEECH

A. THE RATIONALE OF THE SPEECH OR DEBATE CLAUSE BARS LIABILITY FOUNDED ON THE CONTENT OF A LEGISLATIVE SPEECH BUT DOES NOT BAR LIABILITY BASED ON AN ANTECEDENT CORRUPT AGREEMENT.

1. The speech or debate clause is aimed at promoting an independent Congress, uninhibited from taking action deemed to be in the public interest. To that end, it provides assurance to a representative that no civil or criminal liability can be founded upon his official speech or action. In so doing, it permits the unscrupulous Congressman "to vent his spleen upon others" with impunity because "to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties." *Gregoire* v. *Biddle*, 177 F. 2d 579, 581 (C.A. 2) (L. Hand, setting forth the rationale of the executive privilege); see *Cochran* v. *Couzens*,

42 F. 2d 783, 784 (C.A.D.C.), certiorari denied, 282 U.S. 874 (applying such rationale to the legislative privilege).

This rationale is applicable in suits based upon the *content* of a legislator's speech or action, where immunity is necessary to prevent impediments to the free discharge of his public duties. But it does not justify granting him immunity from prosecution for accepting or agreeing to accept money to make a speech in Congress. The latter case poses no threat which could reasonably cause a Congressman to restrain himself in his official speech, because no speech, as such, is being questioned. It is only the *antecedent conduct* of accepting or agreeing to accept the bribe which is attacked in such a prosecution. "Whether the party taking the bribe lives up to his corrupt promise or not is immaterial. The agreement is the essence of the offense; when that is consummated, the offense is complete." 3 Wharton, *Criminal Law and Procedure*, § 1383 (Anderson ed. 1957); see also *United States* v. *Hood*, 343 U.S. 148, 151.[3] Precisely the same concept underlies a conspiracy charge. It is settled that "conspiracy is the offense which the statute defines without reference to whether the crime which the conspirators have conspired to commit is consummated." *Williamson* v. *United States*, 207 U.S. 425, 447; *United States* v. *Rabinowich*, 238 U.S. 78, 85-86; *Goldman* v. *United States*, 245 U.S.

[3] The proscription of 18 U.S.C. 201(c) is directed against any public official who, in exchange for the performance of an official act, "corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value * * *."

474, 476-477. Thus, if respondent, after accepting the bribe, had failed to carry out his bargain, he could still be prosecuted for the same offense charged here, but it could not be argued that any speech was being "questioned" in his prosecution. The fact that respondent fulfilled his bargain and delivered the corrupt speech should not render the entire course of conduct constitutionally protected.

2. The critical distinction between a prosecution based on the *content* of an official speech and one founded on the *antecedent unlawful conduct* of accepting or agreeing to accept a bribe to make the speech, overlooked by the court below, is well recognized in the case of other established privileges. It is settled that a judge cannot be held liable for the content of any judicial opinion. See *Randall* v. *Brigham*, 7 Wall. 523, 536-539; *Bradley* v. *Fisher*, 13 Wall. 335, 347-350; *Alzua* v. *Johnson*, 231 U.S. 106, 111. But it has never been thought that he is immune from prosecution for accepting a bribe in connection with his official duties. Nothwithstanding the Constitution's provision for impeachment of judges guilty of misconduct, the first Congress, many of whose members were closely identified with the drafting of the Constitution, enacted a statute providing criminal sanctions against judges who take bribes in exchange for an "opinion, judgment or decree." Act of April 30, 1790, Sec. 21, 1 Stat. 112, 117.

The principle which controls this case was applied in *Braatelien* v. *United States*, 147 F. 2d 888 (C.A. 8), where a "Conciliation Commissioner" appointed under the Frazier-Lemke Act of 1940 was charged

as a member of a conspiracy to defraud the United States by the corrupt administration of that Act. Rejecting Braatelien's contention that, under the judicial privilege, he was not subject to punishment for criminal acts performed by him in his judicial capacity as a Commissioner, the court stated (147 F. 2d at 895):

> It is true that as a general rule a judge can not be held criminally liable for erroneous judicial acts done in good faith. * * * But he may be held criminally responsible when he acts fraudulently or corruptly. Judicial title does not render its holder immune to crime even when committed behind the shield of judicial office. *The sufficient answer to this defense is that Braatelien was not indicted for an erroneous or wrongful judicial act. He is charged with conspiracy to defraud the United States by corruptly administering or procuring the corrupt administration of an Act of Congress. The crime charged is distinct from his official acts. It might have been consummated without the performance of a single judicial act on his part.* The crime was complete when the unlawful agreement was made and an overt act was consummated by anyone of the conspirators, even though such overt act be not one laid in the indictment. [Emphasis added.]

See also *United States* v. *Manton*, 107 F. 2d 834 (C.A. 2).

In the prosecution of a judge for taking a bribe in exchange for a judicial decision, as in that of a member of Congress for taking a bribe in exchange

for his official vote or speech, the corrupt official act may be evidence of the offense, but the act as such is not being "questioned" as it would be, for example, in an action for libel. In a suit for libel, giving the speech or rendering the judicial decision would itself constitute the alleged offense, while in a bribery prosecution, the offense is discrete from the speech or the decision.[4]

3. In applying the constitutional provision designed to promote legislative independence, the judgment of Congress that criminal prosecution for bribe-taking in connection with official duties does not restrain legislative freedom is entitled to great weight. Congress was certainly aware of its privilege of free speech and was undoubtedly aware that the privilege encompassed not only debate but voting and other official conduct. Yet Congress has consistently proscribed bribe-taking in connection with such conduct without evidencing the slightest qualm that punishment of the corrupt antecedent act would hamper the legislative process. In 1853 it enacted a statute making it a crime for a member of Congress to accept a bribe "to influence his vote or decision on any question, matter, cause, or proceeding which may then be pending, or may by law, or under the Constitution of the

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[4] Similarly, the privilege recognized in *Barr* v. *Matteo*, 360 U.S. 564, could not conceivably extend to prevent the trial of government officials for taking money to perform acts which are within the scope of their authority. Under the reasoning of the court below, such officials could never be prosecuted for bribery without violating the privilege since a bribery prosecution would "question" the motives behind the official act.

United States, be brought before him in his official capacity * * *." 10 Stat. 170, 171. During the debates resulting in the adoption of this Act, no claim was made by any legislator that this Act would impinge upon or impede his right of uninhibited freedom of speech.[5] See the opinion of the district court, App. 54.

As recently as 1962, in a comprehensive revision of the bribery, graft and conflict-of-interest laws, Congress included its own members in the definition of "public officials" whose delinquencies are judicially punishable. Act of October 23, 1962, 76 Stat. 1119, 18 U.S.C. 201. Once again, there was no suggestion in any of the debates that such legislation might in any way restrict the freedom of congressional speech or action.

4. The test used by the court of appeals—that the privilege applies "whenever the motivation for making a speech is called into question" (R. 299)—is too sweeping a formulation and is not properly tailored to the purposes of the speech or debate clause. Contrary to the opinion below, nothing in *Kilbourn* v. *Thompson*, 103 U.S. 168, or *Tenney* v. *Brandhove*, 341 U.S. 367, requires so broad a standard. In *Kilbourn* this Court ruled, *inter alia*, that a Congressman who sponsors and votes for a resolution calling for the arrest of one allegedly in contempt of Congress is immune from a civil suit for malicious prose-

[5] The Senate debate on the 1862 statute, 12 Stat. 577, indicates the strength of congressional conviction that bribe-taking in exchange for official acts should be judicially punishable even though the content of those acts is itself privileged. 60 Cong. Globe 3260-3261.

cution. And *Tenney* held that, in providing civil remedies against persons who, under color of law, deprive individuals of their constitutional rights, Congress could not have intended to authorize suits against legislators for injuries arising from their official conduct. Both cases may be cited for the proposition that, where the speech and debate privilege is otherwise applicable, its protection may not be withheld on the ground that the offensive official act was improperly motivated. But neither case extends the privilege to include prosecutions not founded upon official conduct.

That the two cases relied upon by the court below do not support its ruling is underscored by consideration of *Coffin* v. *Coffin*, 4 Mass. 1, which this Court cited in *Kilbourn* as "perhaps, the most authoritative case in this country on the construction of the provision in regard to freedom of debate in legislative bodies." 103 U.S. at 204. *Coffin* involved a civil suit for slander against a member of the Massachusetts House of Representatives for a statement made by him to a fellow legislator in a "passage-way" of the legislative assembly, while unrelated business of the House was going on. On these facts, the court held that the privilege did not apply, because the allegedly slanderous remarks were not made while the defendant "was in the discharge of any official duty" (4 Mass. at 29). As the court pointed out, "when a representative pleads his privilege, to entitle himself to it, it must appear that some language or conduct of his, in the character of a representative. is the

foundation of the prosecution, for in no other character can he claim the privilege" (*id.* at 30).[6]

The error of the court below was perhaps prompted by its misconception of the role of respondent's speech in his trial. The court's observation that "one-half of the testimony introduced at the trial related to the speech" (R. 302) is both inaccurate and insufficiently refined. Only a very small portion of the testimony in the government's case-in-chief (roughly 50 pages of over 2200 pages in the trial transcript) "related" to the speech in any way. And none of that testimony concerned the content or giving of the speech. Rather it dealt with the plans of Edlin, Robinson and Heflin to have such a talk given in Congress (App. 180-184), their drafting and editing of the speech (App. 189-190; R. 4-5), their meetings with respondent and his administrative assistant (App. 189-190), Robinson's and Edlin's comments concerning the speech and how it would benefit them (App. 161-163; R. 4-5), and the use of the reprints of the speech purchased by First Continental (App. 205-206, 257-264; R. 11-12). The court of appeals' own summary of the evidence (R. 315-317) shows that, except for respond-

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[6] The court also said in this connection (4 Mass. at 30): "But to consider every malicious slander, uttered by a citizen, who is a representative, as within his privilege, because it was uttered in the walls of the representatives' chamber to another member, but not uttered in executing his official duty, would be to extend the privilege farther than was intended by the people, or than is consistent with sound policy, and would render the representatives' chamber a sanctuary for calumny—an effect which never has been, and, I confidently trust, never will be, endured by any House of Representatives of *Massachusetts*" (emphasis in original).

ent's testimony in his defense,[7] the evidence "relating" to the speech did not focus on the giving of the speech as such but rather on the unlawful antecedent conduct of which the speech was one end product.

We, of course, readily acknowledge that the offense arising from the bribe must be fully proved and that it may not be inferred from the mere fact that the legislator has made a speech favorable to particular interests. In this case, however, the evidence of respondent's guilt, which involved matters wholly extraneous to the speech in Congress, was "more than sufficient to support the jury's verdict" (opinion of the court of appeals, R. 320). Where, as here, the government clearly proved its case independent of the speech or inferences therefrom, no purpose of Article I, Section 6 warrants a reversal.

5. The "practical reason" relied on by the court of appeals (R. 304)—that a "groundless charge [of bribery] may be sufficient to destroy [a member of Congress] at the polls" and that "the process of indictment by a grand jury and inquiry in a court may itself be so devastating that an innocent congressman may well fear it"—argues too much. Since a "groundless charge" of corruption with respect to any official act of a Congressman "may be sufficient to destroy him at the polls," the court's reasoning would require that no bribery statute could ever be invoked against

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[7] As we have noted (n. 2, *supra*) the official copy of respondent's speech was placed in evidence by respondent himself.

any member of Congress.[8] This, of course, is not the law. See, *e.g.*, *Burton* v. *United States*, 202 U.S. 344; *May* v. *United States*, 175 F. 2d 994 (C.A.D.C.), certiorari denied, 338 U.S. 830. Moreover, if an unscrupulous prosecutor were out "to get" a particular member of Congress, he could secure indictments on "groundless charges" of tax evasion or other crimes unrelated to his official duties; but such a possibility has never warranted the adoption of a rule of absolute immunity from criminal prosecution. In short, the court of appeals has applied a rule which does not fit this case. It is one thing to say that free and uninhibited legislative debate is such an important right of the people that, in order to prevent its erosion, protection is given the subject matter of any speech in Congress, no matter how unworthy its purpose, by immunizing a legislator from civil suit or criminal prosecution for delivering it. See *Tenney* v. *Brandhove*, 341 U.S. 367, 377. It is an entirely different matter to immunize a Congressman, as was done here, from prosecution for a corrupt agreement which would have been actionable whether he made the speech or not.

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[8] 18 U.S.C. 201 (c) prohibits a Congressman from accepting anything of value in return for: (1) the performance of any official act; (2) the commission of any fraud on the United States; and (3) doing or omitting any act in violation of his official duty.

Since most State constitutions also embody the speech or debate privilege (see *Tenney* v. *Brandhove*, 341 U.S. 367, 375 n. 5) the reasoning of the court below also calls into question the numerous provisions directed against the misconduct and conflicts-of-interest of State legislators. See the statutes set out in the opinion of the district court, App. 54 n. 6.

B. THE ENGLISH BACKGROUND SUSTAINS THE VIEW THAT THE PRIVILEGE OF FREE SPEECH AND DEBATE WAS DESIGNED TO PROTECT THE CONTENT OF SPEECH, NOT THE ANTECEDENT ACT OF ACCEPTING A BRIBE.

There is nothing in the historical development [9] of the legislative privilege in England to support the view that it was intended to offer a legislator immunity from prosecution for receiving a bribe to perform an official act. To the contrary, the entire development related solely to the content of official speech or action.

1. The first significant claim that a legislator could not be punished for the content of legislative speech occurred in 1455 in the case of Thomas Yonge (Young), one of the "knights for the shire and town of Bristol." [10] He complained to Commons that he

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[9] The principal authorities we have relied upon for the English historical development are the following: Taswell-Langmead, *English Constitutional History* (Eleventh ed., Plucknett, 1960); May, *Law of Parliament* (7th ed. 1873); 1 Anson, *Law and Custom of the Constitution* (3d ed. 1897); Wittke, *The History of English Parliamentary Privilege* (1921); Neale, *Free Speech in Parliament* (Tudor Studies, 1924); Chrimes, *English Constitutional History* (1953), and 6 Holdsworth, *History of English Law*, (1924). For convenience, we will hereafter refer to these texts by the author, followed by appropriate page numbers.

[10] There is an earlier case (1397) involving one Thomas Haxey who, because he had petitioned Commons that the expenditures of the royal household be reduced, was condemned as a traitor and sentenced to death. In 1399, after Henry IV had ascended the throne, he annulled the judgment on the petition of the Commons which pointed out that the entire procedure was "contrary to the usual course in Parliament, and in destruction of the most ancient customs of the Commons." A number of commentators, however, have dis-

had been arrested for a motion made by him in Commons concerning the descent of the throne. The importance of his petition for relief was the novelty (at that time) of his claim that members of Commons by their ancient liberty "ought to have their freedom to speke and sey in the Hous of their assemble, without eny maner chalange, charge or punycion therefore to be leyde to theyme in eny wyse." [11]

Under Henry VIII, the Commons began to articulate its privileges, at first hesitantly but later with increasing vigor and reliance upon precedent. In 1512 one Richard Strode, a member of the Commons, had been imprisoned by a county court on the ground that certain bills he had introduced in Commons were contrary to the law of the local "stannary" (Parliament) of the county that he represented. By statute, Commons declared the local proceedings void and further enacted, with the approval of the Lords and the Crown, that all suits against members of Parliament "for any bill, spekyng, reasonyng, or declaryng of any mater or maters concerning the Parliament, to be communed and treated of, be utterly voyd and of non effecte." [12] By 1542, and generally thereafter, the petition of the Speaker of the House of Commons

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counted the significance of the case in the development of the privilege because Haxey was not an elected member of Commons. See, *e.g.*, *Taswell-Langmead*, 174-175, 196; *Neale*, 259; but cf. Veeder, *Absolute Immunity In Defamation: Legislative and Executive Proceedings*, 10 Colum. L. Rev. 131, 132, n. 4 (1910).

[11] *Wittke*, 24-25; *Taswell-Langmead*, 196, 247-249.

[12] *Taswell-Langmead*, 248-249.

presented to the King at the opening of Parliament claimed the privilege of legislative freedom of speech among the prerogatives of members of the Commons.[13]

In the time of Elizabeth I, when Commons was claiming the right to initiate legislation, particularly on ecclesiastical matters, Commons asserted an unimpeachable freedom of speech and debate. Thus in 1566, when the Queen commanded Parliament to terminate its discussion concerning her possible marriage or her naming of a successor, a member of Commons questioned whether the Queen's directive cutting off debate was "not against their liberties and privileges." After continued discussion in Commons, the Queen found it advisable to revoke her prohibition.[14] In the next twenty years, this question of initiative led to repeated conflict with the Crown. Commons asserted that a limitation on its power to initiate and debate legislation was in derogation of its privilege of free speech, while Elizabeth sought to control the power of initiative by declarations of prohibition and temporary imprisonment of especially vociferous members of Commons.[15] In her

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[13] *Taswell-Langmead*, 246-247.

The other basic privileges at the time were (1) freedom from arrest and molestation; (2) access to the King's person whenever occasion required and (3) that all proceedings in Commons should receive the most favorable construction from the Crown. See *May*, 64-65.

[14] *Neale*, 276; *Taswell-Langmead*, 311-313, 316-317; *Wittke*, 26-27.

[15] See *Taswell-Langmead*, 313-317; *Wittke*, 26-27; 2 Taylor, *The Origin and Growth of the English Constitution*, 206-207 (1904); *Neale*, 278-285.

eagerness for tactical victories, however, Elizabeth revoked prohibitions previously imposed on legislative speech and left unused powers normally exercised by royal authority.[16] As a consequence, Commons gained the experience and boldness it needed in its struggle with the Stuarts, who sought to create a monarchy free in both theory and practice from the restraints of Commons.

In 1604, one year after James I acceded to the throne, Commons claimed that "the privileges of Parliament were as much their 'undoubted right,' as the right of property which every subject had in his lands or goods; that the House of Commons was a court of record and the highest court in the land; and that these privileges being necessary for the conduct of the business of the House, they could not be 'withheld, denied, or impaired, but with apparent wrong to the whole estate of the realm.' "[17] When James thereafter imposed custom duties without parliamentary consent, commanding Commons not to challenge the Crown's prerogative in this matter, Commons responded that it was "an ancient, general, and undoubted right of Parliament to debate freely all matters which do properly concern the subject and his right or state; which freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal dissolved."[18]

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[16] *Neale*, 285-286.

[17] 6 *Holdsworth*, 93; *Taswell-Langmead*, 334-336.

[18] *Chrimes*, 144-145. This principle was later embodied in the Protestation of 1621. *Taswell-Langmead*, 357-358.

The last significant case in which the privilege of legislative free speech was challenged by the Crown as an infringement on its prerogatives came during the reign of Charles I. In 1629, Eliot, Hollis and Valentine, all members of the Commons, had been imprisoned under a judgment of the Kings Bench for speeches in Commons which Charles I considered libelous and seditious. This judgment was strongly condemned by Commons, and in 1641 it declared the proceedings to be against the law and privilege of Parliament.

In reversing the judgment during the Restoration, Commons resolved that the Act of Henry VIII in Strode's Case in 1512, *supra*, p. 20, was not a special act but a law of general application, "extending to indemnify all and every the members of both houses of Parliament, in all Parliaments, for and touching any bills, speaking, reasoning, or declaring of any matter or matters in and concerning the Parliament to be communed and treated of * * *." [19]

The principle of legislative freedom to speak was firmly fixed when it was embodied in the Bill of Rights of 1689 (I Will. & Mary Sess. 2, c. 2), which declared "That the freedome of speech and debates or proceedings in Parlyament ought not to be impeached or questioned in any court or place out of Parlyament." [20] Thus, by the beginning of the eighteenth century, the significant century of American colonial development, Commons had the unchallanged right to

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[19] *Wittke*, 29-30.

[20] *May*, 113, 115-116; 1 *Anson*, 153-154; *Taswell-Langmead*, 451.

complete latitude of discussion in the House and the right to initiate and introduce legislation on any matter whatsoever. The embodiment of this right was at the core of the speech or debate clause of our Constitution.[21]

It is significant that the development of the privilege in no way related to conduct beyond the official duties of the legislators. It represented an effort to obtain legislative initiative and to ward off curtailment of Parliament's authority through the device of labelling offensive legislative speech as "libelous" or "seditious." There is a sharp difference between such charges as those against which the speech or debate privilege was erected and the charge of accepting bribery. As to the former, it may be said that "erroneous statement is inevitable in free debate, and * * * it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need * * * to survive * * *.'" *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 271-272; see also *Barr* v. *Matteo*, 360 U.S. 564. Proof of bribery, on the

[21] There is no basis for reading the speech or debate clause as embodying any concept of exclusive congressional authority to punish members for taking bribes. It is true that the growth of Parliament's right to discipline its own members paralleled, to some extent, the development of the speech and debate privilege in sixteenth and seventeenth century England. But the expansion of the so called *lex parliamenti*—Parliament's authority to punish offenses to its dignity or integrity, in many instances to the exclusion of the courts—is essentially an eighteenth century development. It took place after the content of the speech and debate privilege had become fixed and was not taken over into American jurisprudence. *Watkins* v. *United States*, 354 U.S. 178, 192.

other hand, involves no such danger of impinging upon the "breathing space" required for free expression because of inferences from inadvertent misstatements.

2. No post-revolutionary English decision in any way undermines the distinction between liability for the content of a legislative speech and liability for a corrupt agreement to make a speech. *Ex parte Wason*, 4 Q.B. 573 (1869), relied on by the court of appeals (R. 297) does not espouse a contrary doctrine. In that case, the complainant alleged that he had given Lord Russell a petition to be presented to the House of Lords for the removal of the Lord Chief Baron from his office. He further alleged that Russell, the Lord Chief Baron and another member of the House agreed to and did make false statements in the House, to the effect that the complaint's charge against the Lord Chief Baron was untrue. On these allegations, the court held that it had no jurisdiction over the complaint on the ground "that *statements made by members of either House of Parliament in their places in the House*, though they might be untrue to their knowledge, *could not be made the foundation of civil or criminal proceedings*, however injurious they might be to the interest of a third person. And a conspiracy to make such statements would not make the persons guilty of it amenable to the criminal law." (Opinion of Cockburn, C.J., 4 Q.B. at 576) (Emphasis added.) The Court's own words point up the crucial difference between *Ex parte Wason* and the present case. Here, unlike *Wason*, no statement in the legislature is the foundation of the charge. What is being prosecuted

is an underlying corrupt agreement to accept a bribe, which is subject to criminal sanctions whether the speech is actually made or not. See *Regina* v. *Bunting*, 7 Ont. Rep. 524 (1885, Canada).

C. THE COURT OF APPEALS' CONSTRUCTION OF THE SPEECH OR DEBATE CLAUSE IS OPPOSED TO THE DESIGN OF THE FRAMERS.

From the beginning, American political thinkers emphasized that the right of legislative free speech was for the benefit of the people who were being represented. This concept was embodied in a number of early State constitutions. The Massachusetts Constitution of 1780, for example, provided: "The freedom of deliberation, speech and debate, in either house of the legislature, is so essential *to the rights of the people*, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever" (Part The First, Art. XXI).[22] (Emphasis added.)

The privilege had been incorporated in the Articles of Confederation, (Article 5, clause 5) in essentially the same form as it appears in the Constitution. James Wilson, a member of the Committee of Detail which was responsible for the insertion of the speech or debate clause into the Constitution, explained the provision as follows:

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[22] 1 Poore, *Constitutions and Charters*, 956, 959, (1878). See for almost the same formulation, the New Hampshire Constitution of 1784, Part 1 (The Bill of Rights), Article XXX, 2 Poore, *supra*, 1280-1283. See also *Coffin* v. *Coffin*, 4 Mass. 1, 27, 28.

> In order to enable and encourage *a representative of the public to discharge his public trust* with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offence. [Emphasis added.] [23]

It would be a serious distortion if a provision designed to promote the fulfillment of a public trust could be used to protect a legislator in the very act of forsaking that trust in favor of a private allegiance. That such a construction of the clause offends the design of the framers is underscored by a consideration of the historical events to which they were reacting at the time they drafted the Constitution.

In the eighteenth century, having lost the power to limit the authority of Commons to speak and initiate legislation, the Crown turned to more subtle methods of control. "Votes which were no longer to be controlled by fear, were purchased with gold." [24] Throughout that period, "the corruption of individual members, by places, by pensions, and by bribery" [25] became a way of political life. The systematic maintenance of a ministerial majority by the regular payment of bribes is said to have been the "invention" of Sir Robert Walpole, Chief Minister of the Crown dur-

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[23] 2 *Works of James Wilson* 38 (Andrews ed. 1896).

[24] 1 May, *The Constitutional History of England*, 300 (1889).

[25] 1 *Anson*, 331.

ing the period.[26] Thereafter, George III, acting as his own minister in these matters, was reputed to have bribed members of Commons to maintain a majority in that House to support his policies in the Revolutionary War.[27]

This technique of government by corruption was greatly aided by the fact that the Commons owed no meaningful responsibility to the people it purportedly represented. As a consequence of the Revolution of 1649, "[t]he prerogative of the Crown had been still further limited; the power and activity of Parliament being proportionally increased, while no means had yet been taken to insure its responsibility to the people. A majority of the House of Commons—beyond the reach of public opinion,—not accountable to its constituencies,—and debating and voting with closed doors,—held the political destinies of England at its mercy." [28] Seats in Commons were controlled by a small number of powerful families, with members responsive to their will. In this situation "when the Crown bid for votes in the House, it was but outbidding or supplementing the influence and connexions of the aristocratic families who dominated the party affiliations of many of the members." [29]

In the middle of the eighteenth century the Crown was able to use Commons to its own purposes in the

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[26] 1 *Anson*, 331-340.

[27] 10 Holdsworth, *History of English Law*, 104-105 (1938).

[28] 1 May, *The Constitutional History of England*, 300 (1889).

[29] *Chrimes*, 171; 1 *Anson*, 343.

celebrated case of John Wilkes. After being thwarted by Wilkes' successful assertion of parliamentary privilege in its attempt to prosecute him for the publication of a paper labelling false certain statements made by George III, the Crown turned to Parliament for help. The "royally-controlled" Commons held the document to be a libel and breach of privilege and ordered it burned. The next few years saw Wilkes repeatedly expelled from Commons in its exercise of control over its own elections despite his repeated election. His struggle with the Crown and Parliament lasted almost twenty years, until he gained final victory. As one scholar has pointed out:

> He had directed popular attention to the royally-controlled House of Commons, and pointed out its unrepresentative character, and had shown how easily a claim of privilege might be used to sanction the arbitrary proceedings of ministers and Parliament, even when a fundamental right of the subject was concerned.[30]

There can be no doubt that the founders were aware of the political corruption in England when they adopted our Constitution. In obvious reference to this situation, one of the framers pointedly noted that it was "notorious, that [legislators] are more frequently the representatives and instruments of the executive magistrate, than the guardians and advocates of the popular rights."[31] Indeed, the framers could personally testify to

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[30] *Wittke*, 122. See also, *id.* at 115-120.

[31] *The Federalist*, No. 56 (Hamilton or Madison), p. 387 (Bourne ed. 1914).

the use in England of parliamentary privilege "as a screen for the basest oppression." [32] The Wilkes affair was fresh in their minds [33] as were the machinations of George III in bending Commons to his will in the Revolutionary War by financial and other inducements. In the face of this immediate history, one can hardly infer that when the framers embodied in our Constitution the right of legislative free speech and debate, they conceived of it as rendering Congress impotent to provide for judicial prosecution of members of Congress for bribery.[34] The framers, deeply opposed to Parliament's disregard for public sentiment, sought to establish a Congress responsive to the will of its constituents. It would have been contrary to this design to protect legislative bribe-taking from criminal sanctions. Free speech or debate was not to be questioned, but breaches of public trust, such as were common in eighteenth century England, were surely never thought to be privileged.

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[32] *Wittke*, 15.

[33] As James Madison's biographer rhetorically inquired "What American newspaper of the day ever failed to carry his name?" 1 Brant, *James Madison The Virginia Revolutionist*, 136 (1941).

[34] It is interesting to note in this connection that the very same provision of the Constitution which granted freedom of legislative speech (Article 1, Section 6) also provided that "no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office." It has been suggested that this provision was the forerunner of modern day conflict-of-interest statutes. See *United States* v. *Brown*, No. 399, O.T. 1964, slip op. 1, 6, (dissenting opinion).

II.

ARTICLE I, SECTION 5, OF THE CONSTITUTION DOES NOT RESTRICT THE POWER OF CONGRESS TO PROVIDE FOR JUDICIAL PUNISHMENT OF A MEMBER WHO TAKES A BRIBE

Arguably, the court of appeals may have based its opinion in part on the view that "the Constitution has clothed the House of which [respondent] is a member with the sole authority to try him" [35] (R. 303). In so stating, the court referred to that part of Article I, Section 5, which reads:

> Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Any suggestion that this grant of intramural authority carries with it a limitation on judicial power to punish Congressmen for bribe-taking is unsound. Moreover, it has already been flatly rejected by this Court.

1. In *Burton* v. *United States*, 202 U.S. 344, this Court affirmed the conviction of a United States Senator for agreeing to receive and receiving compensation from a private party for his services in relation to a mail fraud proceeding pending before the Post Office Department—a violation of Section 1782 of the Revised Statutes. It was argued that that

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[35] It seems to us more likely that the court below based its decision only upon its construction of the speech or debate clause and then observed that, as a result of that construction, the only forum open to try respondent would be the House.

statute was invalid because it conflicted with Article I, Section 5, by which "the Senate is made * * * the sole judge of the qualifications of its members, and, with the concurrence of two-thirds, may expel a Senator from that body" (202 U.S. at 366). In rejecting this contention, the Court ruled that "there is no necessary connection between the conviction of a Senator of a public offense prescribed by statute and the authority of the Senate in the particulars named" and that "it was never contemplated that the authority of the Senate to admit [a member] to a seat in its body * * * or its power to expel him after being admitted, should, in any degree, limit or restrict the authority of Congress to enact" statutes otherwise within its competence (202 U.S. at 367).

In an analogous situation, this Court has made it clear that a statute providing judicial sanctions for an offense which is also punishable by the House against which it is committed is not objectionable as an invalid delegation of legislative authority. Thus, while Congress has been held to have inherent authority to punish a nonmember for contempt,[36] it may also enact legislation (now 2 U.S.C. 192, originally adopted in 1857)[37] providing for the trial of a con-

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[36] *Anderson* v. *Dunn*, 6 Wheat. 204. But cf. *Marshall* v. *Gordon*, 243 U.S. 521, 543-544 (dictum).

[37] Interestingly, this legislation was directly prompted by the refusal of a newspaperman to divulge to the House of Representatives the names of those Congressmen who he had claimed in the press were soliciting bribes on matters pending in the House. See *Watkins* v. *United States*, 354 U.S. 178, 207-208, n. 45.

tumacious witness in a court of law. *In re Chapman*, 166 U.S. 661, 671-672; *Jurney* v. *MacCracken*, 294 U.S. 125, 151-152. The same principle applies here. Congress may punish its own members for corrupt practices [38] and may also make such behavior a crime triable in the courts.

2. As we have noted (*supra* pp. 7-8, 13-14), Congress has never viewed its disciplinary power as exclusive. Indeed it is by no means clear that even the English Parliament, which had immensely expanded its power to punish for offenses to its prerogatives by the eighteenth century, had succeeded in obtaining the exclusive right to try members accused of taking bribes in connection with their official duties.[39] But

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[38] *In re Chapman*, 166 U.S. 661, involved a Senate investigation into charges that some Senators had been speculating in sugar stocks during the consideration of a tariff bill. The Court held this investigation within the purview of Article I, Section 5 (*id.* at 669-670).

[39] There is no doubt that Parliament itself punished its own members who took bribes. However, one English historian (whose treatise was cited by this Court in discussing the legislative privilege from arrest, *Williamson* v. *United States*, 207 U.S. 425, 442) has written—albeit without the citation of direct authority—that a member of Parliament "who is found guilty of bribery forfeits his seat, and is ineligible for that parliament, besides being liable to prosecution in the same manner as bribed voters and persons corrupting them * * *." Bowyer, *Constitutional Law of England*, 90 (2d ed. 1846). Apparently, Bowyer's view stemmed from the ruling of Lord Mansfield in *Rex* v. *Pitt*, 3 Burr. 1335 (1767) that bribery at election of members of Parliament was always a crime punishable at common law. This ruling has also been relied upon by later Commonwealth cases for the proposition that a legislator was subject to common law punishment for tak-

even if Parliament's disciplinary power were exclusive, it is clear that the framers did not intend to vest Congress with the sole authority in this area.[40] To the contrary, the broad scope of Parliament's power in the middle of the eighteenth century, which had resulted in flagrant abuses,[41] and which was emu-

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ing a bribe in connection with his official duties. See *Rex* v. *Boston*, 33 C.L.R. 386 (1923, Australia); *Regina* v. *White*, 13 S.C.R. 322 (1875, N.S.W.); *Regina* v. *Bunting*, 7 Ont. Rept. 524 (1885, Canada).

[40] That there is no historical link between Congress' disciplinary power and the *lex parliamenti*, the disciplinary power of the eighteenth century Parliament, was noted by this Court in *Anderson* v. *Dunn*, 6 Wheat. 204, 233:

> The truth is, that the exercise of the powers given [Congress] over their own members, was of such a delicate nature, that a constitutional provision became necessary to assert or communicate it. Constituted, as that body is, of the delegates of confederated states, some such provision was necessary to guard against their mutual jealousy, since every proceeding against a representative would indirectly affect the honor or interests of the state which sent him.

[41] By the eighteenth century, Commons "could take cognizance of almost any offense under the *lex parliamenti*, punish it as a breach of privilege, and thus invade the field of jurisdiction that rightly belonged to the judges of the *lex terrae*" (*Wittke*, 200). From its basic privilege that its members were free from civil arrest or molestation, Commons successfully asserted the power to punish trespass on the estates of members, theft of their goods or those of their servants and the arrest of their servants. Correspondingly, members of Commons and their servants were declared to be outside the reach of the common law courts during the time that Parliament was sitting. This led to the sale of "protections", issued under the seal of particular members, stating in effect that named persons were servants of the member and should be

lated, with similar results, in many of the Colonial Assemblies,[42] was viewed with suspicion by the framers. Their writings repeatedly expressed fear of legislative excess. Madison pointed out that "[t]he legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex." It was not enough, he thought, for the Constitution "to mark, with precision, the boundaries" of the various departments of government; additionally, he believed that obstacles had to be erected against the possible abuse of power by a legislative assembly. For "in a representative republic, * * * where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the

---

free from arrest, imprisonment and molestation during the term of Parliament. In addition, Commons not only asserted the power to determine the outcome of disputed elections but sought to broaden that authority by asserting the sole jurisdiction to determine who composed the lawful electorate in a particular election (*Wittke* 56-57, 63-77; *Taswell-Langmead,* 321-322, 580-582). As this Court described this development in *Watkins* v. *United States,* 354 U.S. 178, 188-191, both Houses of Parliament "claimed absolute and plenary authority over their privileges", the right to declare "what those privileges were", what "new privileges were occasioned", and "what conduct constituted a breach of privilege."

[42] See Clarke, *Parliamentary Privilege in the American Colonies* (1943) particularly at 15-22, 29-58, 72, 103-109, 117, 123-124, 127-130. See also Potts, *Power of Legislative Bodies to Punish for Contempt,* 74 U. Pa. L. Rev. 691, 780 (1926).

objects of its passions, by means which reason prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions." [43] In the same vein, Jefferson wrote to Madison in 1789 that "[t]he tyranny of the legislatures is the most formidable dread at present, and will be so for long years." [44]

In light of this background, one cannot read into Article I, Section 5 an intention to define a legislative power so sweeping as to preclude judicial investigation of charges of official corruption against members of Congress.

3. Sound considerations of policy support the same conclusion. In the first place, legislative machinery is not well suited to resolving the sensitive issue of individual wrongdoing. The 1857 statute dealing with contumacious witnesses was adopted in part "to avoid the procedural difficulties" inherent in legislative trial.[45] Moreover, the initiation, as well as the outcome, of a legislative trial is apt to be governed by political factors extraneous to the dictates of justice

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[43] *The Federalist*, No. 48, pp. 338-340 (Bourne ed. 1914). See also *The Federalist*, Nos. 49, 56, 73; *United States* v. *Brown*, No. 399, O.T. 1964, slip op. 5-7.

[44] Quoted in *Tenney* v. *Brandhove*, 341 U.S. 367, 375, n. 4.

[45] Of course, an even more important reason was "to permit the imprisonment of a contemnor beyond the expiration of the current session of Congress." *United States* v. *Bryan*, 339 U.S. 323, 327; *Watkins* v. *United States*, 354 U.S. 178, 207, n. 45; *Jurney* v. *MacCracken*, 294 U.S. 125, 151.

in the particular case.[46] As one commentator has recently pointed out, "Congress itself has been notoriously slow and exceedingly reluctant to apply its own palliatives to situations of legislative slander. In the entire course of this country's existence only eighteen attempts were made by Congress to purge itself of what Congress considered 'unhealthy' elements." [47]

A judicial trial, by comparison, offers greater protection to the interests of the public and of the Congressmen involved. The criminal penalty places a Congressman's conduct under inquiry only if a grand jury determines that there is probable cause to believe that he has betrayed the public trust. It gives the accused legislator the benefits of all the constitutional guarantees applicable in the trial of criminal cases, and it provides an impartial tribunal to protect an unpopular Congressman from a politically motivated legislative forum. Moreover, statutes making legislators triable in the court for breaches of their trust help to eliminate suspicions that a legislator's acts are corruptly motivated and promote public confidence in the integrity of Congress.

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[46] See the report of the Senate committee appointed to investigate the case of Senator John Smith, charged with complicity in the Aaron Burr conspiracy. Sen. Doc. No. 278, 53d Cong., 2d Sess., pp. 23-25.

[47] Oppenheim, *Congressional Free Speech*, 8 Loyola L. Rev. 1, 27 (1955-1956); see also Yankwich, *The Immunity of Congressional Speech—Its Origin, Meaning and Scope*, 99 U. Pa. L. Rev. 960, 972-973 (1951).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be vacated and the judgment of conviction reinstated on all counts.

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No. 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STATES OF AMERICA,
Petitioner,

v.

THOMAS F. JOHNSON

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THOMAS F. JOHNSON

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IN THE

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OCTOBER TERM, 1965

UNITED STATES OF AMERICA,
Petitioner,

v.

THOMAS F. JOHNSON

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THOMAS F. JOHNSON

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 337 F.2d 180. The opinion of the District Court is reported at 215 F. Supp. 300.

JURISDICTION

The judgment of the Court of Appeals was entered on September 16, 1964. On October 19, 1964, the Chief Justice extended the time for filing the petition for a writ of certiorari to and including November 15, 1964 (a Sunday). The petition was filed on November 16, 1964, and was granted on January 25, 1965 (379 U.S. 988).[1]

[1] As the judgment of the Court of Appeals was entered on September 16, 1964, the last date on which to apply for certiorari would maybe have been October 16, 1964, but for the extension order entered October 19, 1964. That order by its terms fixed the last permissible date as November 15, 1964. It doubtful whether Rule 34(1)'s provision that when computation of a period of time results in a Sunday as the last day, the period embraces Monday, applies when the order of a Justice explicitly fixes a definitive last day. Johnson does not press this point and hopes that the Court will decide this case on its merits.

The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Article 1, Section 6, of the Constitution providing that "for any speech or debate in either House they [members of Congress] shall not be questioned in any other place" permits the government to make a criminal charge that a member of Congress collaborated with others in the preparation of a speech in the House of Representatives, made the speech there for their benefit and received a gift for doing so.

2. Whether in enacting the conspiracy statute Congress intended that it should apply to an alleged conspiracy to make a speech in the House of Representatives for compensation.

3. Whether the indefinite nature of the conspiracy charge violated Johnson's Fifth and Sixth Amendment right that the indictment clearly inform him of the offense charged.

4. Whether this Court should repudiate the all embracing concept of conspiracy to defraud of Section 371 sought by the government.

5. Whether the District Court erred in refusing Johnson access to the transcript of testimony before the Grand Jury which indicted him when the government had breached the "seal of secrecy" in violation of Criminal Rule 6(e).

6. Whether the Fourth Circuit erred in holding that original interview notes of FBI agents are not producible under the Jencks Act.

7. Whether the District Court committed error in refusing to instruct the jury as to an essential element of the substantive offense.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 6 of the United States Constitution provides in part:

> The Senators and Representatives . . . shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

AMENDMENT I.

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor be deprived of life, liberty, or property, without due process of law.

AMENDMENT VI.

> In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; . . .

18 U.S.C. 371, provides in pertinent part:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

18 U.S.C. 281, which was repealed after the alleged commission of the acts involved in this case, provided in part:

> Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

STATEMENT

A.

General

Thomas F. Johnson lives in Berlin, Worcester County, Maryland. He practiced law in Berlin and Snow Hill on the Eastern Shore of Maryland and had an office in Baltimore with a well known member of the Baltimore Bar. Johnson served as State's Attorney for Worcester County from 1934 until 1939 and in the State Senate of Maryland from 1939 until 1951. He was elected to Congress from the First Congressional District in 1958 and reelected in 1960 (App. 559-560). Johnson ran again for Congress in the fall of 1962 and, although indicted three weeks before the general election, he was only narrowly defeated.[2] While

[2] Johnson received approximately 30,000 votes, and his Republican opponent 33,000 (App. 560).

in the State Senate of Maryland and later in Congress, Johnson continued to practice law in Snow Hill and Berlin as well as in Baltimore (App. 560-561).

B.

The Evidence As To The Speech

While the government states that ten days before Johnson's speech Robinson issued a check to Johnson for $500.00 (Gov't Brief, p. 5), it fails to tell the Court that his covering letter made clear that this was a political campaign contribution and it was so treated by Johnson (App. 566). The check was deposited in the bank account of his campaign treasurer and used, as in the case of his other campaign contributions, for advertising, radio, television, etc. in support of the candidacies of John F. Kennedy, Lyndon B. Johnson and the defendant Johnson (App. 252, 567). The check was made a matter of public record by its inclusion in an itemized report filed by the treasurer in the Circuit Court for Worcester County (App. 567).

Although Robinson made his political campaign contribution of $500.00 to Johnson on June 20, 1960, no one testified that Johnson solicited or was promised the contribution provided he would make a speech defending Maryland State Savings and Loan Associations from an attack in the Washington Star. The Star article, of May 27, 1960, in labeling all Maryland State Savings and Loan Associations as "phonies" (Gov't Exhibit 55), was so unfair that it would seem a Maryland Congressman was not only entitled, but almost obligated, to reply to it.

In 1960 and 1961 defendant J. Kenneth Edlin was a dominant figure in two Maryland savings and loan institutions, First Colony Savings and Loan Association and First Continental Savings and Loan Association, and the defendant William L. Robinson was the general counsel

for these associations. In April and May, 1960, Edlin, Robinson and Heflin, public relations man for an Institute of Independent Savings and Loan Associations promoted by Edlin, had been discussing allegedly unfair abuses of state savings and loan associations by the Federal Savings and Loan League and by other detractors. Robinson or Edlin expressed the hope that a member of Congress might make a speech on this subject and Heflin received a draft of such a speech from Robinson on May 2, 1960. Heflin made some corrections in the draft, as well as several additional drafts, and returned them to Robinson (App. 182-184).

In the spring of 1960 Johnson had met Edlin and Robinson in connection with the financing of an Assateague Island Bridge project in Worcester County, Maryland, Johnson's home county. In May, 1960, at a luncheon of Marshall Diggs, a prominent lawyer of Washington, Johnson, Edlin and Heflin at the Congressional Hotel, Heflin was introduced to Johnson as a public relations man for the Institute of Independent Savings and Loan Associations. There was conversation about the Assateague Island Bridge project with which Diggs and Johnson were connected (App. 197). Heflin and Edlin then talked about the unjustified attacks made upon state savings and loan associations by a Federal Savings and Loan League. Heflin described the plight of the independent state savings and loan association in competition with federal savings and loan associations. He argued that though "federally insured" the federal associations were not as good an investment as the state savings and loan associations because F.S.L.I.C.'s assets were less than 1% of the insured liability. Heflin also told the Congressman that some federals had been advertising that their deposits were guaranteed by the United States Government when, in reality, they were not

(App. 149-50). Heflin pointed out to Johnson that the independent savings and loan industry in Maryland was being jeopardized by the Federal Savings and Loan League (App. 186). Johnson listened attentively (App. 186, 197). This was the only meeting of Johnson and Edlin during the months of May, June and July, 1960.

On May 27, 1960, a newspaper article in the Washington Star characterized all Maryland state savings and loan associations as "phonies" (Gov't Exhibit 55) although these associations constituted one of Maryland's oldest industries. Buarque, Johnson's administrative assistant, testified that upon publication of the Star article, he had seen it, "considered it a smear" on a Maryland industry, showed it to Johnson and told him he should answer it. Johnson told Buarque to write something for him (App. 468, 469). Heflin and Robinson went to see Johnson in his office and showed him a copy of the newspaper article as evidence of the mistreatment of the independent savings and loan associations (App. 186). Heflin, a government witness, testified that he told Johnson "It was categorically unfair. I still think so" (App. 189, 201).

Johnson turned Heflin over to his administrative assistant, Buarque. Thereafter, Heflin supplied some facts and figures for the draft of a speech which Buarque prepared (App. 189, 190).

There was no evidence that Johnson or Buarque discussed the contents of the speech with Edlin or Robinson. Johnson and Buarque testified without contradiction that they had not seen the earlier draft of a speech prepared by Robinson (App. 479), and it will be found that Robinson's May draft (App. 183) bears no substantial relationship to the speech prepared for Johnson by Buarque. Heflin, a government witness, testified that he did not prepare the

speech; it was prepared by Buarque (App. 200). Buarque confirmed this.[3]

The speech was devoted to answering the newspaper article attacking the integrity of the entire Maryland state savings and loan industry. The speech contained no reference to First Continental Savings and Loan Association or to First Colony Savings and Loan Association, or to any other named association (App. 931).

Buarque and Johnson testified that the reasons for the speech were (1) they considered the Washington Star article an unfair attack upon a Maryland industry and (2) this might be an issue which Johnson could grasp because he had political ambitions for state office in 1964 and he was looking for a state-wide issue (App. 480). At that time there had been no substantial savings and loan scandal in Maryland.

After the speech was made on June 30, 1960, Heflin telephoned Buarque requesting reprints and Buarque replied that the Congressman would not bear any part of the cost of them (App. 463). Buarque requested Mrs. Kiernan in Johnson's Congressional office to order 10,000 reprints from the Government Printing Office (Tr. 2643). Later a second order was received from Heflin for 40,000 reprints. When Buarque questioned the number, Heflin pointed out that reprints of Congressman King's speech in the House of Representatives defending a state savings and loan association equalled 50,000 (App. 483). Mrs. Kiernan ordered them. The small checks for reprints were endorsed by Johnson over to the Printing Office. There was no evidence that Johnson had any knowledge of the orders for

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[3] Buarque also identified his draft of the speech in his handwriting. (App. 477).

reprints except when Mrs. Kiernan submitted to him the checks for his endorsement.

Although Robinson was later reimbursed for his $500 contribution to Johnson's campaign for reelection by First Continental Savings and Loan Association, there was no evidence contradicting the testimony of Johnson and Robinson that Johnson was not told that Robinson was so reimbursed. Naturally, First Continental wished a Congressman who might support state savings and loan associations to be elected.

There was no evidence that during the months of May, June and July, 1960, Johnson met with, or talked to, Edlin except at the May, 1960, luncheon attended by a number of persons. No evidence was introduced that an agreement of any kind was made at this luncheon. There was no evidence that during this time Johnson met with, or talked to, Robinson except upon the single occasion when Robinson and Heflin came to his Congressional office and showed him the Washington Star article of May 27, 1960, as evidence of the mistreatment of the Maryland state savings and loan associations, and there was no evidence of any agreement at that meeting. Throughout this long trial no one testified that there was an understanding that, if Johnson agreed to make the speech, he would receive a political campaign contribution or that he agreed to make the speech in consideration of the contribution. There was no evidence that Johnson had requested that a contribution be made to his campaign for reelection.

As to the distribution of the reprints of Mr. Johnson's speech, the savings and loan associations used them in the same way they used reprints of a speech of Congressman King of California and another of Congressman Utt of

California[4] (App. 201). Johnson testified that he had no knowledge of the distribution, or use, of these reprints (App. 573) and the government offered no evidence to the contrary.

As evidence of a criminal conspiracy to make a speech in the Congress, the government relies in its brief (p. 4, 6) upon the fact that Sadie Goldman[5] said that Edlin said, out of the presence of Johnson, he had made a "new contact" with a Congressman as a result of which "we are going to be rich". She also said that Robinson said that Johnson was "on our payroll" (App. 161, 162). The Government's brief (p. 6) also relies upon a statement of Raines that Edlin said to him out of the presence of Johnson "you see, we have friends on the Hill—we have nothing to fear on our indictment. These people are interested in us and the injustice we have been done"[6] (III, App. 4). In concluding that there was a sufficiency of evidence the Court of Appeals relied upon these statements (337 F.2d 196-201).

These statements of Mrs. Goldman and Mr. Raines, hearsay as to Johnson, were admitted by the District Court only against Edlin or Robinson. The District Judge correctly ruled that statements out of the presence of Johnson were not admissible against him (Tr. 421, 422). They

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[4] On April 28, 1960, Congressman Utt of California made a speech in the House of Representatives on behalf of the Long Beach Savings and Loan Association, denouncing the treatment of that Association by the Federal Home Loan Bank Board. On May 19, 1960, Congressman Cecil King of California made a speech in the House of Representatives on the same subject. (Tr. 470-71).

[5] Mrs. Goldman's husband had been President of First Continental and he was under indictment at the time of the trial (App. 279). The indictment was dismissed as to him after the trial of Johnson.

[6] An indictment against Raines was dismissed after the trial of Johnson.

were not admissible against Johnson under any known legal theory.

C.

THE SUBSTANTIVE COUNTS

The issue under each of the substantive counts was whether a particular check of Robinson or of First Continental designated in those counts was received by Johnson as compensation for his visits to the Attorney General and to the Assistant Attorney General in charge of the Criminal Division. There was no substantial dispute as to the visits to Justice by Johnson. It was undisputed that Johnson did not receive any payments from Edlin or any other defendant in the criminal case pending before the Department of Justice. It was undisputed that Johnson did receive the checks of Robinson and First Continental specified in the substantive counts and that he deposited them in his bank account as in the case of other legal fees. As in the case of other payments made by Robinson to 4 or 5 other reputable attorneys for their legal services for the savings and loan associations, Robinson was reimbursed for them (Tr. 4286-87). On the books of First Continental they were recorded as "legal fees" or "legal services" or "escrow account—Charles County Land Co." or "payment in full—Brooke [Brooke Virginia property]."

The government contended that it was a reasonable inference that these payments in whole or in substantial part constituted compensation for Johnson's visits to Justice. It was contended on behalf of Johnson that they represented payments on account of his legal services rendered First Continental and Charles County Land Company and Leisure City Land Company unrelated to his visits to Justice and, as Johnson and Robinson testified, he had not been employed by Edlin or anyone else to make his visits

to Justice and he did not receive any compensation for them.

Facts with respect to Johnson's visits to Justice not mentioned by the Government are:

(1) Johnson had been told by Edlin and Robinson that the pending criminal charge[6a] was unjust and had been inspired by competitors (App. 695); Johnson asked for a review of the criminal case upon its merits (Kennedy, App. 864; Miller, Tr. 2150).

(2) Johnson made no misrepresentation and no coercive statement.

(3) The Attorney General and Assistant Attorney General both testified that Johnson at the meetings said that he did not wish to interfere with the Department of Justice and he was not asking for any favors or anything improper from the Department of Justice (App. 409, 438, 862, 869, 871, 873).

(4) The Attorney General and Assistant Attorney General indicated that at the time of the meetings they did not consider the visits to be improper. There was no policy of the Attorney General against such visits by Congressmen (App. 855, 862).

(5) Johnson's visits had no effect upon the course of the criminal case and Johnson did not return to Justice after he understood in September, 1961, that a final review decision had been made to go forward with it.

(6) No one testified that any checks specified in the substantive counts, or any other checks, were paid to Johnson for his visits to Justice. The government relied in large part upon the hearsay statements out of the presence of Johnson which were not admitted against Johnson (See p. 10 herein).

[6a] A defendant, First Colony, was located at Elkton in Johnson's Congressional District.

There was no evidence that Johnson had any relationship to the savings and loan associations except as local Maryland counsel for their general counsel, Robinson. Johnson was not an officer, director or shareholder of the savings and loan associations. There was no evidence that he participated in any policy decisions with respect to their operation.

Although there was clear venue in the District of Columbia of the substantive counts, as the place where the alleged services were rendered, i.e., the Department of Justice, and where the checks were received by Johnson, the government elected the District of Maryland where the only possible basis of venue—where Johnson deposited the checks in his Berlin, Maryland, bank account—was tenuous and highly conceptualistic (App. 61). The District Court acknowledged that "it is unfortunate that questions of venue should turn upon the banking law of the place where the checks were deposited . . ." (App. 68). The Court of Appeals struggled with the problem without really solving the venue perplexities engendered by the government's selection of the artificial Maryland venue. 337 F.2d at 193-195.[7]

The highly charged atmosphere of the trial worked a heavy burden on court, counsel and jurors alike. In spite of his presumption of innocence, the timing of the indictment 3 weeks before the election had caused Johnson to be defeated for reelection to Congress by his Republican opponent. Congressman Johnson's speech defending Maryland state savings and loan associations and criticizing

[7] If the intricacies and variations of State negotiable instruments law are too much for the United States to abide by in civil cases, *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943), they certainly furnish a questionable norm for venue in federal criminal cases. The clear and appropriate venue was the District of Columbia.

Federal savings and loan associations and the Federal Savings and Loan Insurance Corporation was bound to be viewed as an attack on the concept of federal insurance. At the time of trial the insolvency of some savings and loan associations in Maryland had been widely publicized and had aroused considerable public feeling. The fact that the Attorney General of the United States and the Assistant Attorney General of the United States in charge of the Criminal Division, testified on behalf of the prosecution and thus threw the weight of their high offices against the accused was without precedent. The inevitable publicity of the trial in the press and other mass media was unequalled as regards a criminal trial in the Baltimore/Washington area. The presence of all these factors made it extremely difficult to keep the scales of justice in balance.

SUMMARY OF ARGUMENT

The argument is in two parts—Part One showing that the conspiracy count is unconstitutional and Part Two dealing with issues decided by the Fourth Circuit in favor of the government.

Part One. The Court of Appeals was right in holding that the conspiracy count, and the evidence submitted under it, violated the Speech and Debate provision of the Constitution. We show the significance of unrestrained legislative speech in the light of the American tradition of free speech and recall the numerous decisions of this Court under the First Amendment that no inhibition upon uninhibited, robust utterances is tolerable and that the tradition of legislative liberty is so central to our Constitutional heritage that it is subject to no restraint by the executive power by reason of the uniqueness of the Con-

gressional forum with its potential for immediate and vital impact on the entire nation.

The ancient lineage of the Speech and Debate provision in the history of constitutional liberty demonstrates that it was designed to preclude the Crown from making any criminal charge with respect to the motivation or content of legislative speech. The notion of the government that the constitutional provision was intended to protect only the content of speech is not supported; it was designed not to protect the content of utterances but to protect the speakers themselves from any conceivable criminal charge with respect to the intent, the purpose, the motivation or the substance of legislative utterance. *Kilbourn* in 1881 and *Tenney* in 1951 rejected the contention of the government that the Speech and Debate provision should be narrowly interpreted, the Supreme Court holding that it applied not only to utterances in the Congress but to all official acts there.

The decision of the Fourth Circuit invalidating the conspiracy charge under the Speech and Debate clause is confirmed by the historic interpretation accorded the separation of powers doctrine. Since *Fletcher v. Peck,* in 1810 it has been held without qualification that under the separation of powers doctrine the judiciary may not inquire into the motives of members of the legislative branch of the government with respect to their official acts.

There is no valid basis for the distinction asserted by the government between an antecedent criminal agreement to make a speech in the Congress and the content of speech concededly protected by the Speech and Debate clause. Even if this Court accepted in principle that distinction, the conspiracy charge here did necessarily involve the content of Mr. Johnson's speech and required an inquiry into its substance. A searching inquisition was conducted

into the motivation, the source of material, the preparation, the substance and use of the speech.

The content of speech in the Congress and a criminal charge of conspiracy as to its motivation are not separable, for no words are spoken or written without purpose. The early decision in *Strode's* case in 1512 and the resultant Strode's Acts of 1521 and 1667 as well as the decision of the Queen's Bench in *Ex parte Wason* in 1869 repudiate the government's new found distinction. Practical considerations disclose that a conspiracy charge and the content of a speech are inseparably linked and point up the lack of reality in the government's argument that a prosecution would lie if the speech were not delivered. The Speech and Debate provision would be emasculated if the government's restrictive contention could be accepted.

The validity of the federal bribery statute (18 U.S.C. Sec. 205) is not involved in this case because Mr. Johnson was not and could not have been charged with violating it or conspiring to do so as that statute carefully refrains from including speech or debate in the proscribed conduct; it was limited to official action and vote with respect to pending matters; Mr. Johnson's speech had no relation to any matter pending in the House of Representatives. We also show that the other contentions of the government are without merit.

To sustain the conspiracy charge the Court must find that in enacting the conspiracy statute (18 U.S.C. Sec. 371) in 1867 Congress intended that its defrauding provision, i.e., conspiracy to defraud the government, should apply to a conspiracy relative to a speech in the House of Representatives. Such an intention was rejected by this Court in *Tenney* under a comparable 1871 federal civil conspiracy statute and the reasoning of the Court there is

even more applicable here. Such an intention was also implicitly denied in *United States v. Gradwell,* 243 U.S. 476 (1917) where the Court held that the defrauding part of the same conspiracy statute involved here was not intended by the Congress to apply to the bribery of voters in elections of members of the Congress.

The indefinite nature of the conspiracy charge violated the Defendant's Fifth and Sixth Amendment right that the indictment clearly inform him of the offense charged because the charging provision of the indictment, namely, paragraph (14) (App. 4, 5), declares the unlawful objects of the conspiracy in terms so broad as to be beyond comprehension. The alleged purposes of the conspiracy are so vague, general and indefinite the government could have offered in evidence in support of the charge testimony as to any and all conduct of any defendant with respect to any matters pending before any administrative department of the government or in the House of Representatives. The indefinite charge constituted the most conspicuous confirmation of the dangers of conspiracy procedure described by this Court in *Grunewald, Krulewitch,* and *Kotteakos.*

This Court should repudiate the all-embracing concept of Section 371 as interpreted by Chief Justice Taft for this Court in *Hammerschmidt v. United States,* 265 U.S. 182 (1924) where the Court defined "conspiracy to defraud" as including the obstruction of lawful governmental functions by "dishonest means" or "overreaching." These elegant words afford no standard for the application of the command of the statute. Such words have no more meaning in law than "sinful" or "wicked" or "unethical". They merely express whatever happens to be current notions of unethical or "bad" conduct, and such vagaries do not meet contemporary Sixth Amendment standards.

In Part Two of the Argument, which unavoidably lengthens the Brief, we show that, contrary to the opinion below, a fair retrial on the substantive counts requires that Johnson have access to the grand jury transcript when the government was allowed to breach "the seal of secrecy" by permitting a potential government witness and his counsel to read a volume of the grand jury testimony before trial in violation of Rule 6(e) of the Federal Rules of Criminal Procedure. The American Bar Association has recommended to the Judicial Conference of the United States that after indictment there should be a disclosure of grand jury minutes. The time has come to stop exalting "secrecy for secrecy's sake."

The District Court and the Fourth Circuit erroneously held that the original interview notes of FBI agents as to what was said to them by a defense witness and a co-defendant did not constitute Jencks Act material and therefore were not producible. This holding would seem to be in violation of *Clancy v. United States,* 365 U.S. 312 and concessions by the Solicitor General in 3 recent cases.

The policy of the FBI in requiring that original interview notes be destroyed is a plain effort to circumvent the *Jencks* decision as well as the Jencks Act and should come under the sanction of the Act, namely exclusion of the FBI agents testimony.

Johnson was denied a requested instruction on a crucial issue under the substantive counts, namely, that to convict, the jury must find that Johnson knew and understood that the checks he received constituted compensation for his visits to Justice. Actual intention not constructive intention was a prerequisite to guilt. The Court's instructions as to Johnson's knowledge and intent were ambiguous and contradictory.

PART ONE
THE CONSPIRACY CHARGE WAS UNLAWFUL

I

THE SIGNIFICANCE OF UNRESTRAINED LEGISLATIVE SPEECH IN THE LIGHT OF THE AMERICAN COMMITMENT TO FREE SPEECH.

The Speech and Debate clause of the Constitution, which has only been before this Court on two occasions *(Kilbourn* and *Tenney)*, cannot be considered insulated from the teachings of this Court with respect to the general First Amendment right of freedom of speech.

1. Merely labeling a charge "criminal conspiracy" gives no immunity from the constitutional protection of the First Amendment. As this Court said in *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964):

> "In deciding the question now, we are compelled by neither precedent nor policy to give any more weight to the epithet 'libel' than we have to other 'mere labels' of state law. *N.A.A.C.P. v. Button*, 371 U.S. 415, 429, 9 L. ed. 2d 405, 415, 83 S. Ct. 328. Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, libel [and likewise conspiracy] can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment."[8]

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[8] In sustaining an Illinois criminal libel statute in *Beauharnais v. Illinois*, 343 U.S. 250, 263 (1952), this Court was careful to note that the Court "retains and exercises authority to nullify action which encroaches on freedom of utterance under the guise of punishing libel."

2. "It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions."[9] "The opportunity should be afforded for 'vigorous advocacy' no less than 'abstract discussion.' "[9a] "Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials.[10] ". . . [E]rroneous statement is inevitable in free debate and . . . it must be protected if the freedoms of expression are to have the 'breathing space' that they "need . . . to survive."[11] In applying constitutional limitations to a charge of criminal contempt this Court has said "such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice."[12]

This Court has repeatedly struck down statutes because they might have a deterrent effect on the exercise of First Amendment freedoms. A flat license tax upon the exercise of First Amendment rights was declared unconstitutional in *Murdock v. Pennsylvania,* 319 U.S. 105 (1943). A registration requirement imposed on a labor union organizer before making a speech met the same fate in *Thomas v. Collins,* 323 U.S. 516 (1944). A municipal li-

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[9] *Bridges v. California,* 314 U.S. 252, 270 (1941).

[9a] *N.A.A.C.P. v. Button,* 371 U.S. 415, 429 (1963); *New York Times Co. v. Sullivan,* 376 U.S. 254, 269 (1964).

[10] *New York Times Co. v. Sullivan,* p. 270; *Terminiello v. Chicago,* 337 U.S. 1, 4 (1949); *DeJonge v. Oregon,* 299 U.S. 353, 365 (1937).

[11] *New York Times Co. v. Sullivan,* p. 271.

[12] *Bridges v. California,* 314 U.S. 252 (1941); *Craig v. Harney,* 331 U.S. 367 (1947); *Wood v. Georgia,* 370 U.S. 375 (1962). In *Bridges* the criticism referred to was criticism of a judge or his decision.

censing system for the distribution of literature, *Lovell v. Griffin,* 303 U.S. 444 (1938); a denial of a tax-exemption to proponents of certain viewpoints, *Speiser v. Randall,* 357 U.S. 513 (1958); a book obscenity law which did not require *scienter* by the book seller as tending to cause a self-imposed restriction of free expression, *Smith v. California,* 361 U.S. 147 (1959); and a federal postal service act requiring an addressee in order to receive his mail to request in writing that it be delivered, *Lamont v. Postmaster General,* 14 L. Ed. 2d 398 (1965), were deemed to abridge freedom of speech because they were likely to have a deterrent effect.

As Mr. Justice Douglas said for the Court in *Lamont* "the regime of this Act is at war with the 'uninhibited, robust and wide-open' debate and discussion that are contemplated by the First Amendment." "But inhibition as well as prohibition against the exercise of precious First Amendment rights is a power denied to government."[13] In no event may an intrusion on First Amendment rights be sustained on the ground that the intrusion was only a minor one.[14]

3. If a charge of criminal conspiracy with respect to the motivation or purpose of a speech made in the House or the Senate on the ground that it is venal or unethical were sustained, serious inhibitions with respect to speech, debate and discussion there would follow. As the Fourth Circuit well said in this case:

> "A practical reason exists for invoking the congressional privilege, which meets the objective of the

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[13] *Lamont,* 14 L. Ed. 2d 403, concurring opinion of Mr. Justice Brennan; *Freedman v. Maryland,* 380 U.S. 51 (1965); *Garrison v. Louisiana,* 379 U.S. 64 (1964).

[14] *Lamont,* 14 L. Ed. 2d 404; concurring opinion of Mr. Justice Brennan; *Boyd v. United States,* 116 U.S. 616, 635 (1886).

> constitutional provision. The design is to promote the independence of all congressmen. To avoid restraint on free expression on the floor of either House, protection is given against the hazard and harassment of inquiry in any court. It is no answer, therefore, to say that if the accused member is innocent of accepting a bribe he has nothing to fear. A groundless charge [criminal indictment] may be sufficient to destroy him at the polls. Moreover, the process of indictment by a grand jury and inquiry in a court may itself be so devastating that an innocent congressman may well fear it." 337 F.2d at 191.[15]

A member of the House of Representatives must of necessity rely heavily on gifts in the form of political campaign contributions to finance the constantly rising costs of his political campaigns requiring access to the various forms of mass communication media. This, as well as an awareness that a Congressman may be swept out of office at any election, has made it mandatory for those without independent means to retain outside economic interests or continue their business or profession.[16] These

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[15] See also note on *Johnson v. United States,* 78 Harv. L.R. 1473 (1965).

[16] The Association of the Bar of the City of New York (Manning, ed.) (1960) *Conflict of Interest and the Federal Service.,* pp. 13-16. "In fundamental respects, however, the congressional problem differs from that of the executive. It is too easy to say glibly that rules governing the administrator should govern the legislator. The Congressman's representative status lies at the heart of the matter. As a representative, he is often supposed to represent a particular economic group, and in many instances his own economic self-interest is closely tied to that group. That is precisely why it selected him. It is common to talk of the Farm Bloc, or the Silver Senators. We would think odd a fishing state congressman who was not mindful of the interests of the fishing industry—though he may be in the fishing business himself, and though his campaign funds come in part from this source. This kind of representation is considered inevitable and, indeed, generally applauded. Sterile application of an abstract rule against acting in situations involving self-interest would

facts of political life suggest that a power of the executive to indict a Congressman on the ground that a political campaign contribution or income from an outside business source was the *true* motivation for a speech he delivered in the halls of Congress would be a very great power indeed.

For a Congressman ". . . to decide at what point and on which issue he will risk his career is a difficult and soul searching decision."[17] To give the executive branch this weapon it seeks to wield against speech in Congress would create a substantial obstacle to the exercise of courage by a legislator. If the executive branch is given such a power of intimidation, it would gain a club to hold over the head of each member of the Congress who has spoken out in favor of a cause where the proponents of that cause have either contributed to his campaign or employed him in a professional capacity. Such a deterrent to the exercise of free speech in the Congress should not be countenanced.

Thus, the acceptance of a gift or a political campaign contribution by a member of Congress is not inherently unethical or dishonest even if it bears some relationship to an innocent act such as a speech. Speeches made with the

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prevent the farmer senator from voting on farm legislation or the Negro congressman from speaking on civil rights bills. At some point a purist attitude toward the evils of conflicts of interest in Congress runs afoul of the basic premises of American representative government.

"Furthermore, no member of Congress can subsist on his government salary. Forced to keep his base and to spend time in his home district, he unavoidably incurs heavy and regular travel expenses. Campaign costs soar as campaign techniques turn to mass communication media. And the congressman must always be prepared to sail on the next ebb of the political tide. These facts, taken together with the myth that membership in Congress is still a part-time job, ensure that congressmen will keep up their outside economic connections, and that they will insist upon the necessity and justice of their doing so."

[17] Kennedy, *Profiles in Courage* (1955, p. 12).

hope and even the immediate prospect of campaign contributions must be numberless. Undoubtedly there have been innumerable instances of Senators and Representatives who have espoused causes and received some related compensation in an infinite variety of forms, i.e., presidential patronage, promises of political support and political contributions. It must be remembered that a member of Congress is answerable for any impropriety in his conduct both to the Congress and to his electorate.

If such a charge can be leveled at a member of the Congress, then the investigative apparatus of the executive power can proceed to inquire into the motivation of any speech made in the Senate or House. Agents of the Federal Bureau of Investigation may intrude themselves into the halls of the Congress and the Senate and House Office Buildings, interview the staff personnel of members of Congress, contributors to Congressional campaigns and others—all for the purpose of ferreting out whether an utterance in the Congress was made, or influenced, by improper or unethical or dishonest motives. Such an investigation, without more, should be deemed an intolerable affront to the privilege of freedom of speech in the Congress.

If such a conspiracy charge were constitutionally permissible, before exercising his right of freedom of speech it might be incumbent upon a prudent member of the Congress to seek and obtain an opinion of the Attorney General that his proposed speech would be permissible and would not violate the conspiracy statute. Such a potentially all embracing, all pervasive restraint upon the right of freedom of speech within the very halls of Congress would be intolerable and irreconcilable with the numerous teachings of this Court. In the area of free speech, conduct may not be restricted "to that which is

unquestionably safe.'"[18] ". . . the pall of fear and timidity imposed upon those who would give voice to public criticism is an atmosphere in which the First Amendment freedoms cannot survive." *New York Times Co. v. Sullivan*, p. 278. As Judge Learned Hand carefully explained in his discussion of the balance of values involved in such a situation "In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant threat of retaliation."[19]

As the Fourth Circuit pointed out in its opinion (p. 191) the possibility of ultimate vindication from such a charge in a court proceeding by a member of Congress is no substitute for the guarantee held out by the Constitution. Fear of a charge by indictment and subsequent trial may be itself so devastating that the most innocent Congressman would necessarily dread such an occurrence to the point where he would suffer silently rather than risk such public humiliation.[20]

4. Freedom of speech and debate in the Senate and House of Representatives has been a cherished tradition of our constitutional history. However highly valued the right of freedom of expression elsewhere may be,[21] that right of the elected representatives of the people within the walls of the Congress has an even greater claim to immunity from restraint. Legislative liberty involves lit-

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[18] *Baggett v. Bullitt*, 377 U.S. 360 (1964).

[19] *Gregoire v. Biddle*, 177 F.2d 579 (2d Cir. 1949).

[20] In spite of Johnson's presumption of innocence, it is evident that his indictment 3 weeks before his election occasioned his defeat. See footnote 2.

[21] The Constitutional safeguard "was fashioned to assure unfettered interchange of ideas or the bringing about of political or social changes decided by the people." *Roth v. United States*, 354 U.S. 476, 484 (1957).

tle more than the right to speak in a legislative body without restriction, restraint or inhibition. Indeed the concept of legislative liberty has been deemed the very basis of our governmental system and all other privileges. "The next great and vital privilege is the freedom of speech and debate, without which all other privileges would be comparatively unimportant or ineffectual." Story, *Commentaries on the Constitution,* (5th Ed. 1891) Vol. I, p. 630. "Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators."[22]

Freedom of speech outside of the halls of Congress may be subject to an exercise of the police powers, including valid obscenity laws and valid libel and slander laws, but it is submitted that the tradition of legislative liberty is so central to our constitutional heritage that it is subject to no restraints or inhibitions by the executive power. The only appropriate restraint is that provided by the Constitution—the disciplinary power of each House. Free speech and debate are important in Los Angeles, California, and Savannah, Georgia, but the uniqueness of the Congressional forum with its potential for immediate and vital impact on the entire nation entitles speech there to special protection. This Court should be especially hesitant to threaten an outlet for speech where there is *no alternative outlet* with the same potential for impact as that threatened.

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[22] *Tenney v. Brandhove,* 341 U.S. 367, 377 (1951).

II

THE SPEECH AND DEBATE PROVISION OF ARTICLE I, SECTION 6, OF THE CONSTITUTION DENIED THE EXECUTIVE AUTHORITY TO BRING, AND THE DISTRICT COURT AUTHORITY TO HEAR, THE CONSPIRACY CHARGE CONTAINED IN COUNT ONE OF THE INDICTMENT.

By pretrial motion Johnson moved to dismiss the conspiracy charge of the Indictment upon the ground that it violated the provision of Article I, Section 6, of the Constitution, that "for any speech or debate in either House they (members of Congress) shall not be questioned in any other place". The District Court denied the motion on the ground that the constitutional provision only applied in civil and criminal prosecutions for libel, slander, treason and sedition, and therefore the Constitution did not bar a criminal prosecution charging a conspiracy by a member of the Congress to make a speech in either House for profit[23] (App. 55).

In the unanimous opinion by Chief Judge Sobeloff, the Fourth Circuit reversed Johnson's conviction. The Court's language is instructive (337 F.2d 189-190):

> "Inevitably, the indictment required an inquiry into Johnson's reason for delivering the speech the very inquiry which the Supreme Court has explicitly declared to be beyond a court's power. *Tenney v. Brand-*

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[23] At the conclusion of the Government's testimony and at the conclusion of all the evidence, the District Court also denied motions of Johnson for judgments of acquittal under the First Count of the Indictment. These motions asserted that the *evidence* submitted by the Government questioned speech or debate in the House of Representatives and therefore violated the constitutional prohibition. See also Johnson's motion for a new trial and in arrest of judgment (App. 973).

hove, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951). The contents of the speech as such were not challenged. In fact the indictment attacked only the purpose for which the speech was made, i.e., 'to defraud the United States.' To prove this, however, the speech in its entirety was introduced into evidence and was commented upon extensively by the prosecution during the trial and in the closing arguments. Since Johnson could not deny making the speech it naturally became necessary for him to demonstrate that his purpose for delivering it was good. But the Supreme Court has declared in Tenney that '(t)he claim of an unworthy purpose does not destroy the privilege.' 341 U.S. at 377, 71 S. Ct. at 788. The speech was more than an incidental feature of the conspiracy charged. Fully one-half of the testimony introduced at the trial related to the speech.

"Federal cases discussing the privilege have repeatedly held that the good or bad faith of the member making the speech is immaterial. Indeed this is precisely the teaching of *Tenney.* In *Cochran v. Couzens,* 42 F.2d 783 (D.C. Cir.) cert. denied, 282 U.S. 874, 51 S. Ct. 79, 75 L. Ed. 772 (1930), for example, the complaint alleged that a Senator '(m)aliciously, wilfully, falsely and wrongfully' delivered a 'scandalous, malicious and defamatory slander' in a speech on the floor of the Senate. In affirming the District Court's dismissal of the complaint, the court held that 'the words forming the basis of plaintiff's action were uttered in the course of a speech in the chamber of the Senate of the United States and were *absolutely privileged* and not subject to 'be questioned in any other place.' " 42 F.2d at 784 (Emphasis added.).

It is submitted that at the threshold of this case in denying the motion to dismiss, the District Judge violated a clear, unambiguous declaration of the Constitution because the allegations of the conspiracy charge with respect to Johnson's speech in the House of Representatives did

plainly question "speech or debate" "in any other Place"; that there is no legal authority in the United States, and none in England since the Bill of Rights of 1689, in support of the drastic limitation the District Judge attempted to write into the constitutional provision; that his restriction was in conflict with two Supreme Court decisions and disregarded numerous other Supreme Court decisions that, under the separation of powers principle, the judiciary may not inquire into the motives of members of the Congress as to their official acts; and that the District Judge struck a crippling blow at an ancient and cherished principle of constitutional liberty.

A.

The Allegations of the First Count

The First Count charged in Paragraph (14) a conspiracy of the Defendants to defraud the United States of (1) the faithful services of Congressman Johnson and Congressman Boykin in the conduct of their official duties and of (2) the faithful services of the administrative officers of the United States, including the officials of the Department of Justice.

Paragraph (14) (d) of the First Count charged that the Defendants conspired to deprive the Government of the faithful services of Johnson and Boykin in their official capacity as members of the Congress, uninfluenced by corruption and uninfluenced by money payments to them by the other Defendants "as compensation for services rendered and to be rendered by said Thomas F. Johnson in behalf of the said other Defendants . . . in relation to matters pending in the House of Representatives . . . " (App. 5). Paragraph (15) asserted that it was a part of the conspiracy that this Defendant should, at the request of Defendants Edlin and Robinson, render

services for compensation by making of a speech defending the operation of Maryland savings and loan associations on the floor of the House of Representatives (App. 5, 6). Paragraph (16) alleged that it was a part of the conspiracy that Defendants Johnson, Edlin and Robinson did cause to be reprinted copies of the speech for distribution to the public at large, etc. (App. 6).

Overt Act (1) claimed Edlin, Robinson and Johnson met and discussed the contents of the proposed speech to be given by Johnson on the floor of the House of Representatives (App. 9). Overt Act (2) claimed that Robinson and others prepared drafts of the proposed speech (App. 9). Overt Act (3) charged that Johnson received a check for $500.00 from Robinson, implying that this sum constituted compensation for the making of said speech (App. 10). Overt Act (4) alleged that on June 30, 1960, Johnson delivered a speech on the floor of the House of Representatives. Overt Act (5) refers to a check for $168.91, of First Continental Savings and Loan Association, payable to this Defendant, implying that it was received in connection with said speech.[24] Overt Acts (6) and (7) (App. 10) charged that this Defendant directed the reprinting of copies of the speech delivered on the floor of the House of Representatives on June 30, 1960.

B.

The Constitutional Provision and Its Ancient Lineage in the History of Constitutional Liberty

The principle embodied in Article I, Section 6 of the Constitution was not fully established in British Parlia-

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[24] The evidence showed that Johnson endorsed this check to the Public Printer in payment of reprints of his speech which his office ordered for a State Savings and Loan Institute.

mentary history until the Bill of Rights of 1689. Hereafter there are reviewed the land-marks of the great struggle between the House of Commons and the Crown finally resulting in the establishment of the principle of liberty as to speech and debate in Parliament. That history demonstrates clearly that the speech and debate provision of the bill of Rights was designed to preclude the Crown from making any criminal charge with respect to the motivation or content of legislative speech.

At the Federal Constitutional Convention the pertinent clause of Article I, Section 6, was adopted without opposition. Only two proposals with respect to the provision were offered and these were not accepted. William Pinkney proposed that it be provided that each House should be the sole arbiter of the privilege. Madison advocated that the extent of the privilege should be delineated.[25] It will be found that the Constitution of almost every state of the Union and almost every foreign democratic nation now contains a constitutional provision that speech and debate in its Congress or Parliament may not be questioned or impeached elsewhere.[26] Thus its great principle has achieved an almost universal acceptance.

C.

In Sustaining the Conspiracy Charge of the Indictment The District Court Violated the Letter and the Spirit of the Constitutional Provision

The concise Constitutional Declaration that "for any speech or debate in either House they [members of Con-

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[25] Butzner, Constitutional Chaff, p. 47.

[26] For example see the Constitutional provisions of Argentina, Art. 61; Belgium, Art. 4; Czechoslovakia, Sect. 44; France, Art. 21; Ireland, Art. 15, Paragraph 13; Italy, Art. 68; Japan, Art. 5; Luxembourg, Art. 68; Netherlands, Sec. 100; Peru, Art. 104 and Portugal, Sec. 89(a).

gress] shall not be questioned in any other place" is clear and unambiguous. It is absolute in its categorical imperative. The clause does not grant an authority to the Congress with respect to Speech and Debate. It assumes the power and denies any authority to the executive or the judiciary in this limited area. It admits no qualification; it concedes no exception. The principle proclaims the exclusive authority of the House and Senate to inquire into the propriety or legality of speech and debate within their chambers. They, and they alone, may charge, hear, acquit, convict or impose sanctions with respect to such matters. The constitutional principle contests no power of the Congress; it admits and reaffirms the power. Although usually referred to as "a privilege", it is a complete denial of any power or authority to the executive and to the judiciary in the area of speech and debate in the House of Representatives and the Senate.[27]

Section 2 of the Third Article of the Constitution provides that the judicial power shall extend to all cases in law and equity arising under the Constitution and the Laws of the United States, etc. The authority and powers of the Federal Courts stem, therefore, from the Constitution and, in making this grant of judicial power, the Constitution, the source of that power, carefully denied to the courts any authority in the area of speech and debate in the Congress.

The scope of the Constitutional prohibition depends upon the meaning of the word "question", particularly as it was used in 1789. Clearly the draftsmen of the Constitution used the word to mean "impeach" or "inquire into" or "to be the foundation of any accusation or prosecution, action or complaint".

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[27] "The privilege is absolute. The purpose, motive or the reasonableness of the conduct is irrelevant." Judge Youngdahl in *McGovern v. Glenn Martz and Washington News Syndicate,* 182 F. Supp. 343, 346 (D.C. D.C. 1960).

The Bill of Rights of 1689 stated that speech, or proceedings in Parliament debate "ought not to be impeached or questioned in any court or place out of Parliament." The Declaration of Rights of 1776 of Maryland provided that "speech and debate ought not to be impeached in any other court or judicature". The Bill of Rights of 1780 of the State of Massachusetts and the Constitution of New Hampshire declared that speech and debate "cannot be the foundation of any accusation or prosecution, action or complaint, in any other Court or place whatsoever". There can be no distinction in meaning between the concise language of the Declaration in the Federal Constitution and the broader language of the earlier English Bill of Rights and of the Maryland, Massachusetts and New Hampshire Constitutions. All had their source in the same historic struggle for freedom of speech in the legislative branch of Government; all were directed to the same end, to assure that freedom. In *Kilbourn* (p. 203) the Supreme Court quoted the provision of the Bill of Rights of Massachusetts, its evident purpose to make clear that, although the Massachusetts provision was broader than the concise declaration of the Federal Constitution, in meaning they were synonymous.

1. Acceptance of the Government's contention would mean that the constitutional prohibition should be narrowly interpreted to insure that it does not protect alleged criminal conduct with respect to speech or debate in the Congress. Yet, this great constitutional privilege has been universally interpreted liberally to achieve its fundamental purpose and never before has any American court attempted to qualify, condition, or limit its full constitutional scope. This principle was expounded in *Coffin v. Coffin,* 4 Mass. 1, 27 (1808) recognized as the

leading authority on Speech and Debate by this Court in *Kilbourn v. Thompson,* 103 U.S. 168 (1881) which repeated the canon of liberal construction.

Tenney v. Brandhove, 341 U.S. 372, 377, involved the charge that members of a California Legislative Committee had violated a civil conspiracy law of the United States. The Court rejected the contention of the Government that the constitutional privilege did not extend to an accusation that legislative conduct was done for a dishonest purpose or in violation of a federal law. The Court said (p. 377):

> "The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives."

2. The District Court and the Government disregard the fact that the constitutional prohibition also applies to the allegations as to the reprinting and republishing of the Johnson speech. The Court may take judicial notice that all speeches made in the House or the Senate are printed in the Congressional Record and duly published as a House or Senate document and made accessible to the public. Thus the publication of the legislative proceedings is done under the authority of the Congress. Any speech embodied in the Congressional Record becomes a public document. Public documents may be reprinted by the public printer by order of any member of Congress on prepayment of their cost. 44 U.S.C. Secs. 71, 72, 79, 82, 162, 163 and 185.

It was under these statutory provisions and the rules of the House that Johnson, as a member of the House, ordered printed copies of his speech for distribution. Since the reprinting of a public document contained in the Congressional Record is done under the authority of the Congress, that reprinting and republication are within the constitutional immunity. *DeArnaud v. Ainsworth,* 24 App. D.C. 167, 5 L.R.A. (N.S.) 174, *Wason v. Walter,* 4 Q.B. 73, 85 (1868).[28]

3. The decision of the Fourth Circuit interpreting the Speech and Debate clause is confirmed by the historic interpretation accorded the separation of powers doctrine. As long ago as 1810, Chief Justice Marshall, on behalf of the Supreme Court, declared in *Fletcher v. Peck,* 6 Cranch 87, 130 (without reference to Article 1, Section 6, of the Constitution), that the judiciary was not competent to inquire into the motives of the members of the legislative branch of the Government in enacting legislation or whether they acted corruptly or with self-interest or under undue influence. He even went so far as to say, "If the majority of the Legislature be corrupted, it may well be doubted whether it be within the province of the judiciary to control their conduct." (p. 130).

Since *Fletcher v. Peck,* the principle that the judiciary may not question the motives of members of the Congress has been deemed fundamental under the separation of powers doctrine. *Arizona v. California,* 283 U.S. 423, 455 (1931); *Hearst v. Black,* 87 F.2d 68, 72 (C.A. D.C. 1936); *Townsend v. United States,* 95 F.2d 352 (C.A. D.C. 1938); *Eisler v. United States,* 170 F.2d 273, 279 (C.A. D.C. 1948); *Barsky v. United States,* 167 F.2d 241, 250

[28] See the note by Bigelow (editor) pp. 631-32, Story, Commentaries Vol. I (5th Ed. 1891).

(C.A. D.C. 1948). The vitality of the principle was reiterated by the Supreme Court as recently as 1950 in *Tenney* where the Court reaffirmed the holding of *Fletcher v. Peck,* (p. 377) "that it was not consonant with our scheme of Government for a court to inquire into the motives of legislators, has remained unquestioned." The government has been unable to reconcile its position in this case with these landmark cases.

4. Mr. Justice Story was undoubtedly correct when he wrote in his *Commentaries on the Constitution,* Vol. I, p. 630 (5th Ed. 1891):

> "The next great and vital privilege is the freedom of speech and debate, without which all other privileges would be comparatively unimportant or ineffectual. This privilege also is derived from the practice of the British Parliament, and was in full exercise in our colonial legislation, and now belong to the legislation of every State in the Union as matter of constitutional right."

D.

History of the Development in England of the Principle of Liberty of Speech and Debate in Parliament Confirms the Invalidity of the Conspiracy Charge

In the Fifteenth, Sixteenth and Seventeenth Centuries the first order of business of a new House of Commons was a petition to the Crown that it recognize for the duration of the House the ancient privileges of the House, including the right of free speech.[29] These petitions implicitly assumed that Parliamentary privileges were a matter of grace subject to grant and limitation by the Crown.

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[29] The History of English Parliamentary Privilege, p. 23, Carl Wittke, Ohio St. Univ. 1921.

The first significant claim that a legislator could not be punished by reason of legislative speech occurred in 1455 in the case of Thomas Yonge (Young), one of the "knights for the shire and town of Bristol." He complained to Commons that he had been arrested for a motion made by him in Commons concerning the descent of the throne. As the government correctly states (Gov't Brief, p. 20) the importance of his petition for relief was the novelty at that time of his claim that members of Commons by their ancient liberty "ought to have their freedom to speke and sey in the Hous of their assemble, without eny maner chalange, charge or punycion therefore to be leyde to theyme in eny wyse.[30]

Under Henry VIII the Commons began to articulate its privileges, at first hesitantly but later with increasing vigor and reliance upon precedent.

In 1512 under Henry VIII Richard Strode, a member of Commons, was prosecuted by the Crown in its Courts and fined and imprisoned for allegedly having a financial interest in a bill to regulate certain abuses connected with the tin industry. On a petition by Strode to the Parliament an act was passed in 1521 annuling his conviction and providing that in the future all suits and charges that might be brought against him and others for any bill, speaking, reasoning, declaring or any matter concerning the Parliament to be communed and treated be considered void. Section 2 of Strode's act provided that, "Sutes, accusementes, condempnacions, execucions, fynes, amerceramentes, punysshmentes, correccions, greivances, charges and imposicions, put or had or hereafter to be put or hadde unto or uppon the said Richard, and to every other of the person or persons afore specified, that nowe be of this present

[30] Note 4 Henry VII, Ch. VIII. See also I Hatsell, 86.

parliament, or that of any Parliament hereafter shalbe for any bill, spekyng, reasonyng, or declaryng of any mater or maters concernyng the parliement to be commended and treated of, be utterly voyd and of none effect." VI Holdsworth, 98.

For a century a dispute raged whether this comprehensive enactment was a private or a public act; in 1629 the judges declaring it a private act applying only to Strode's case, but the Parliamentarians in the struggle with Charles arguing that it was a public bill applicable to all charges and suits after its enactment.[31] Significantly Parliament declared even then that a criminal charge as to the alleged dishonest motives of a member in introducing a bill violated the legislative privilege.

Elizabeth I imprisoned members of the Commons for words spoken in that House although Holdsworth states that "Strode's act was really decisive that it was not legal."[32]

In 1576 during the reign of Queen Elizabeth, Peter Wentworth made his great speech in the House of Commons and there for the first time the claim was made that freedom of speech had a fundamental, entrenched place in the Constitution, entirely removed from its historic status as a privilege dependent upon the grace of the Crown and subject to definition by it.[33] Among other things Wentworth said:

> "Mr. Speaker, I find written in a little volume these words in effect: 'Sweet indeed is the name of liberty and the thing itself a value beyond all inestimable

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[31] *Histroy of English Parliamentary Privilege*, p. 25.

[32] VI Holdsworth, p. 98; IV Holdsworth, p. 179.

[33] Elizabeth I and Her Parliaments, p. 321, J. E. Neale (Jonathan Cape, 1953).

treasure.' So much the more it behoveth us to take heed lest we, contenting ourselves with the sweetness of the name only, do not lose and forgo the value of the thing. And the greatest value that can come unto this noble realm . . . is the use of it in this House . . .

"I was never of Parliament but the last and the last session (i.e. 1571 and 1572), at both which times I saw the liberty of free speech, the which is the only salve to heal all the sores of this Commonwealth, so much and so many ways infringed, and so many abuses offered to this honorable Council . . . that my mind . . . hath not been a little aggrieved . . . Wherefore, to avoid the like, I do think it expedient to open the commodities that grow to the Prince and whole State by free speech used in this place . . ."

* * *

"I conclude that in this House, which is termed a place of free speech, there is nothing so necessary for the preservation of the Prince and State as free speech, and without it it is a scorn and mockery to call it a Parliament House, for in truth it is none, but a very school of flattery and dissimulation, and so a fit place to serve the Devil and his angels in and not to glorify God and benefit the Commonwealth . . ."

* * *

"Free speech and conscience in this place are granted by a special law, as that without the which the Prince and State cannot be preserved or maintained."

* * *

"It is a great and special part of our duty and office, Mr. Speaker, to maintain freedom of consultation and speech . . . I desire you from the bottom of your hearts to hate all messengers, tale-carriers, or any other thing, whatsoever it be, that any manner of way infringe the liberties of this honourable Council. Yea, hate it or them, I say, as venomous and poison unto our Commonwealth, for they are venomous beasts that do use it."

It has been said that this was the most remarkable speech hitherto conceived in the Parliament of England. "No one—at least, we know of no one—had previously thought these questions fearlessly through to the simplicity and clarity of Peter Wentworth's conclusions. He was wrong, utterly wrong in his own generation; but the future hallowed his doctrine. He, indeed, as much as any of his colleagues, shaped that future."[34]

When Wentworth was called to account by a committee appointed by the House, including all Privy-Councillor Members and other officials, and interrogated as to his motives in using abusive language with respect to Queen Elizabeth, he took the position that, if the committee was acting on behalf of the Crown, he would refuse to answer any questions because they had no right to interrogate him; but, if they were acting as a committee of the House, they had such authority and he would willingly answer.[35] Wentworth was convicted and imprisoned in the Tower.

If many members of the House of Commons were creatures of the Crown, if a majority was often too readily intimidated, if Wentworth was only feebly supported, there were some "who with patient resolution and inflexible aim recurred in every session to the assertion of that one great privilege which their soverign contested, the right of Parliament to inquire into and suggest a remedy for every public mischief or danger" IV Holdsworth 180. In each of the Parliaments of 1584, 1585, 1586, 1587 and 1588 a committee of the House was appointed to bring to the notice of the House cases of the breach of their privileges there. Holdsworth suggests that this was a "significant sign of the times" and "the importance of safeguarding

[34] Elizabeth I and Her Parliaments, p. 325.

[35] Elizabeth I and Her Parliaments, p. 326.

of the privilege of freedom of speech was never lost sight of.[36]

It is not surprising to find that the earliest controversies between James I and his Parliaments turned upon questions of privilege, and these questions were in the forefront of the constitutional controversies all through this period.[37]

In James I's first Parliament in 1604 the House of Commons laid it down in clear terms that the privileges of Parliament were as much their "undoubted right," as the right of property which every subject had in his lands or goods; and that these privileges being necessary for the conduct of the business of the House, they could not be "withheld, denied, or impaired, but with apparent wrong to the whole estate of the realm."[38]

When James thereafter imposed custom duties without parliamentary consent, commanding Commons not to challenge the Crown's prerogative in this matter, Commons responded that it was "an ancient, general, and undoubted right of Parliament to debate freely all matters which do properly concern the subject and his right or state; which freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal dissolved."

Neither James I nor Charles I would admit the truth of this view as to the nature and basis of Parliamentary privilege. In 1621 James I told the House of Commons that in his opinion these privileges were not their ancient and undoubted right, but on the contrary, were derived "from the grace and permission of himself and his ancesters"; "for," he said, "most of them grow from

[36] VI Holdsworth, 179, 180.
[37] VI Holdsworth, p. 93.
[38] VI Holdsworth, p. 93.

precedents, which shows rather a toleration than inheritance." Further, he warned that if they persisted in trenching upon his prerogative, he would be forced to trench upon their privileges.[39]

The House of Commons lost no time in contradicting James in the most decided way. Its famous Protestation of 1621 ran as follows:

> "The testation following: that the liberties, franchises, privileges, and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the king, state, and defence of the realm, and of the church of England, and the maintenance and making of laws, and redress of mischiefs and grievances which daily happen within this realm, are proper subjects and matter of counsel and debate in Parliament: and that in the handling and proceeding of those businesses *every member of the House of Parliament hath and of right ought to have freedom of speech, to propound, treat, reason, and bring to conclusion the same: and that the Commons in Parliament have like liberty and freedom to treat of these matters in such order as in their judgments shall seem fittest: and that every member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by censure of the House itself) for or concerning any speaking, reasoning, or declaring of any matter or matters touching the Parliament, or Parliament business . . .*". (Emphasis added.)

James was so enraged at this protestation that he sent for the Journals of the House of Commons, and tore it out with his own hand.

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[39] Chrimes, *English Constitutional History* (1953) 144-145; Letter of the King, Dec. 1621, Prothero, Documents, 313; VI Holdsworth, p. 93.

In 1629, by Order of Charles I, Sir John Eliot, Denzil Holles and Benjamin Valentine, members of the House of Commons, were prosecuted in the Court of Kings Bench, after Parliament's dissolution, for speeches made in the House which the Crown deemed criminal and seditious. The accused pleaded to the jurisdiction of the Court, maintaining that the offense, if any, had been committed and was punishable only in Parliament and not elsewhere. "Words spoken in Parliament . . . cannot be questioned in this court * * *."[40] The King's Bench convicted the members of the House and imprisoned them, Judge Sir William Jones observing: "We are the judges of their lives and lands; therefore of their liberties."[41] Eliot died from the effects of his imprisonment in the Tower.

In a MS. speech written by Eliot for a Parliament, which he did not live to see (Forster, Life of Eliot, ii 445-448) he wrote at p. 466, "Now the whole power and virtue of Parliament depends upon the privileges thereof. Her ancient franchises and immunities are that which has sustained her. A Parliament without liberty is no Parliament." In 1640 members of the Commons were questioned by the Privy Council as to their legislative conduct and imprisoned for their refusal to reply. Macaulay, *I History of England*, p. 96 (Lovell, Ed.).

The decision of the King's Bench in the Eliot case contributed greatly to the growing opposition to Charles, and the Commons never forgot this unwarranted invasion of their privileges. In 1641, the earliest opportunity they had, the Commons adopted resolutions declaring these entire proceedings against their members a breach of Parliamentary privilege. The Civil War prevented further action but after the Restoration, the

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[40] 3 Howell, State Trials, 296.
[41] 3 Howell, St. Tr. 306.

case was reopened and on November 12, 1667, the House of Commons, to remove all possibility of misunderstanding in the future, adopted a resolution declaring Strode's Act of 1521, attempting to guarantee freedom of legislative speech and action, a general law declaratory of the "ancient and necessary rights and privileges of Parliament."[42] On November 23, 1667, the Commons declared the specific judgments against Eliot and the other members illegal and breaches of privilege, and later the Lords ordered the judgment of the King's Bench reversed.

In 1642 Charles I sent his Attorney General to charge Pym, Hollis, Hampton and other members of the House with high treason in the House of Lords and Charles went in person with armed men to arrest them in Parliament. This action of the Crown was caused by legislative acts and utterances, including a remonstrance of the Commons in November 1641 enumerating the faults of the Charles Administration. I Macaulay p. 107. It triggered the Civil War. After the Restoration the principle of legislative liberty was so established that Charles II did not dare to attack it directly; his men did mutilate Sir John Coventry for his utterances. I Macaulay p. 191.

Immediately after the Revolution of 1688, Parliament enacted the Bill of Rights of 1689 (I Will & Mary Sess. 2, C.2) providing:

> "that the freedome of speech, and debates, or proceedings in Parlyament ought not to be impeached or questioned in any court or place out of Parlyament."

In 1689 the House of Commons summoned two Judges of the King's Bench to its bar to answer for a judgment they had given adverse to the claim of the privileges of the lower House involving matters other than the freedom

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[42] The History of English Parliamentary Privilege, p. 30.

of speech. After hearing their defense, the Commons resolved that Judge Pemberton and Judge Jones by "giving judgment to overrule the plea to the jurisdiction of the Court of King's Bench . . . had broken the privileges of the House" and for their breach of privilege they were ordered into custody.[43]

The vigorous assertion of Parliamentary privilege by the House of Commons and its establishment in the Bill of Rights did not mean that improprieties as to speech or debate committed by members of the House went unpunished. An offer of a bribe to, or its acceptance by, a member of Parliament for any matter connected with his parliamentary duties was deemed an insult to Parliament. Even as early as the Seventeenth Century the House of Commons repeatedly sat as a tribunal to hear charges that its members had accepted bribes.[44]

It has been accurately said by one authority that "after the Revolution of 1688 and the consequent Bill of Rights, the privilege of freedom of speech and debate in Parliament was never again seriously questioned or denied."[45] Ever since, for almost 300 years, freedom of speech has protected members of Parliament from any civil or criminal proceedings with respect to speech or debate by the Crown or the courts and we have found no case in England since that against Sir John Eliot in 1629 where the Crown has

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[43] 3 Howell, St. Tr. 331 et seq.

[44] One in 1694, 11 C.J. 274, 5 Parl. His. 900; two in 1695, 11 C.J. 283, 5 Parl. His. 910; and one in 1697. On May 2, 1695, Parliament declared that to offer a bribe to a member of Parliament should be deemed a high crime and misdemeanor, an insult to the member and to the House. The resolution assumed that the tribunal of the House of Commons had sole jurisdiction to hear and convict upon such a charge. *Parliamentary Practice* (12 edt. 1917), p. 85.

[45] *History of English Parliamentary Privilege,* p. 30, 32.

attempted to impeach a speech by way of a conspiracy charge or otherwise.[46]

The entire course of constitutional history of parliamentary privilege in England indicates that the great privilege of speech and debate was intended to free members of the legislative branch from any inhibition caused by fear of prosecution from the Crown stemming from any utterances in Parliament. This history in no way supports the refined distinction between an antecedent agreement to make a speech and the speech itself asserted by the government. Everything said by Wentworth, Eliot, and others denies the distinction. Everything said by the House of Commons in Strode's Act, its Protestation of 1621 and its Resolution of 1667 making clear that Strode's Act was a general law reject the distinction.

In Strode's Act the issue was the effect of Strode's personal interest in the object under debate—an interest antecedent to the introduction of his Bill. In *Ex Parte Wason,* as here, a conspiracy was charged with respect to an agreement antecedent to speech in Parliament. Parliament in Strode's Act and the Queen's Bench in *Wason* held that the historic speech and debate privilege precluded any inquiry by the Crown or the Courts in such matters.

The historic purpose of the speech and debate provision was to prevent any inhibition of members of Parliament with respect to speech or debate. The history of the privilege confirms the view that merely to label the prosecution a conspiracy with respect to the motivation of a speech—an alleged antecedent agreement to make it—would be no less chilling, no less inhibiting than a direct prosecution by the executive power for the content of

[46] The criminal charge in *Wason* (p. 50-51 herein) was not instituted by the Crown.

speech. Thus the history of the speech and debate clause confirms that it was never designed to admit of the qualification now sought by the government for the first time since the Bill of Rights in 1689.

III

THE CONTENTIONS OF THE GOVERNMENT

A

The Government's Contention That Article I, Section 6 of the Constitution Protects Only Content of a Speech Would Destroy That Provision

Throughout its brief the government argues that, while the Speech and Debate clause prohibits prosecutions founded upon the *content* of a speech delivered in Congress, it permits a prosecution founded upon an alleged criminal antecedent agreement which motivated the speech. This unprecedented distinction suggested by the government is at war with the turbulent history and the basic policy of the privilege.

1. The government's attempted distinction between a criminal charge based upon an antecedent agreement and one based upon the content of a speech is disingenuous in view of the requirements of the conspiracy statute involved in this case and the government's attempt to meet those requirements in the indictment and at trial. The conspiracy statute, 18 U.S.C. 371, requires as an essential element of the offense of conspiracy to defraud the United States not only an antecedent agreement, but also an overt act in furtherance of the conspiracy. The overt act central to the conspiracy indictment against Johnson was overt act number 4:

> "On or about June 30, 1960, in the District of Columbia the defendant THOMAS F. JOHNSON delivered a speech on the floor of the House of Representatives" (App. p. 10).

It cannot be doubted that the proof of this overt act and proof that it was in furtherance of the conspiracy required an inquiry into the content of the speech. *Except for the fact that the content of the speech supported state savings and loan associations* it was not possible for the government to meet its burden of showing that this overt act was in furtherance of the conspiracy. If Johnson had made a speech in the House on June 30, 1960, but it related to foreign policy or constituted an attack upon state savings and loan associations, its content would have denied the charge. Likewise, proof of overt acts 1, 2, 6 and 7 charged in the indictment and proof that they were in furtherance of the conspiracy necessitated an inquiry into the content of the speech delivered by Johnson.

The antecedent agreement charged by paragraph 15 of the conspiracy charge was an alleged agreement by Johnson to make a speech in the House of Representatives *defending state savings and loan associations.* This charge involved the content of speech and required an inquiry into its content.

The transcript of the testimony at trial indicates that a searching inquiry into the motivation, source of material, preparation, content and use of the speech was made by the government. (*For example see Kunkle,* App. 258-260; *Wyckoff,* App. 205-206; *Kiernan,* App. 254; *Buarque,* App. Vol. III, 36-43; *Heflin,* App. 180-191; *Rains,* App. 149-150 and *Johnson,* Tr. 3785-3831.[47]) Thus, even were this Court

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[47] Interrogation of Johnson included these questions:

Asst. U.S. Attorney Marion: "Now your speech was finally de-

to accept in principle the distinction asserted by the government, it could have no relevance to the prosecution of Johnson.

2. The history of legislative liberty emphatically repudiates the restrictive interpretation claimed by the government. That history makes clear that its prohibition was intended to enable the elective branch of the government to be free from any possibility that they be degraded, intimidated, discredited or oppressed by any criminal charge by the executive power with respect to legislative speech or debate. As Blackstone said "The privilege of Parliament was principally established in order to protect its members not only from being molested by their fellow subjects but also more especially from being oppressed by the power of the Crown."[48]

> "Article I of the Constitution, in saying of members of the Senate and House alike that "for any Speech or Debate . . . they shall not be questioned in any other place," was intended mainly to prevent harassment of legislators by the Executive authority as Parlia-

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livered or submitted to the clerk and it was printed in the Congressional Record, and it stresses the value of commercial mortgage guaranty insurance, does it not?" (Tr. 3805).

Asst. U.S. Attorney Marion: "Congressman, do you mean to tell the jury that Mr. Buarque put that language in the speech about three indicted institutions and none convicted, and you did not inquire as to which particular institutions they were?" (Tr. 3805).

In argument to the jury government counsel said "Congressman Johnson claimed under oath, Member of the Jury, that he did not even bother to check the facts to ascertain whether he could truthfully make such a statement in his speech.

"If so, I submit to you, it was utterly and completely irresponsible and reprehensible. . . ." (Tr. 5839).

[48] Blackstone, *Commentaries*, ch. 2, p. 164, also Holdsworth, *History of English Law* (1924), vol. 6, p. 231.

ment once protected itself from such harassments by a King.''[49]

As we have shown, the leading case in England in the 16th Century—*Strode's* Case of 1512—did not involve the content of utterances in the House of Commons. On the contrary, Strode was charged by the Crown in the King's Bench with having a financial interest in a bill introduced by him in the House, such financial interest being antecedent to his legislative action. In 1521 Parliament annulled his conviction in its famous Strode's Act which attempted to deny to the Crown any authority to make any criminal charge of any kind with respect to speech or debate or other legislative action of a member of the House of Commons. Thereafter it was the firm position of the Parliamentarians that Strode's Act was a general act applicable to any accusation by the Crown with respect to legislative speech or action. After the Civil War and the Restoration in 1667 the House of Commons formally adopted a resolution declaring Strode's Act of 1521 attempting to guarantee freedom of legislative action a general law declaratory of the ''ancient and necessary rights and privileges of Parliament.'' Thus the most significant case in the history of the development of legislative freedom, ultimately established by the Bill of Rights of 1689, was not related to the *content* of speech in the House of Commons and Strode's Acts of 1521 and 1667 were directed at nullifying all executive and judicial action which attempted to question the alleged criminal motivation of legislative speech and action.

In *Ex Parte Wason* 4 QB. 573 (1869) the Queens Bench held that it had no jurisdiction of a conspiracy charge that an allegedly unlawful antecedent agreement had been made

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[49] William S. White, CITADEL, The Story of the U.S. Senate (1956), ch. XIX, p. 265.

relative to speech in the House of Lords. Thus the Court rejected the very contention made by the government here. The language of Cockburn, C.J., in *Wason* is equally applicable to Johnson:

> ". . . Mr. Wason charged and proposed to make the substance of the indictment, that these three persons did conspire to deceive the House of Lords by statements made in the House of Lords for the purpose of frustrating the petition. Such a charge could not be maintained in a court of law. It is clear that statements made by members of either House of Parliament in their places in the House, though they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings, however injurious they might be to the interest of a third person. And a conspiracy (i.e. the antecedent agreement) to make such statements would not make the persons guilty of it amenable to the criminal law . . .".[50]

As Blackburn, J., stated:

> "I perfectly agree with my Lord as to what the substance of the information is; and when the House is sitting and statements are made in either House of Parliament, the member making them is not amenable to the criminal law. It is quite clear that no indictment will lie for making them, nor for a conspiracy or agreement to make them, even though the statements be false to the knowledge of the persons making them. I entirely concur in thinking that the information did only charge an agreement to make statements in the House of Lords, and therefore did not charge any indictable offence."

The historic background of the speech and debate privilege, i.e. the struggle between the House of Commons and the Crown culminating in bloody civil war, makes it un-

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[50] In its brief the government has misread *Wason* and quotes one sentence out of context from the quotation above (Gov't Brief p. 25).

deniably clear that the fundamental purpose of the privilege was to protect, not the content of speech, but the speakers themselves and indeed the entire legislative body from criminal prosecution by the Crown with respect to any and all utterances and their purposes in the legislative chamber.

Everything said by the Parliamentarians, Wentworth, Eliot, and others is a denial of the qualification sought by the government here that the speech and debate provision of the Bill of Rights did not apply to the alleged criminal motivation of legislative speech and everything said by the House of Commons in Strode's Act of 1512, in its Protestation of 1621 and in its second Strode's Act of 1667 make clear that speech and debate in Parliament, including content and motivation, could not be the foundation of any criminal charge by the Crown. *Wason* confirmed this conclusion.

The very fact that since the enactment in 1512 of Strode's Act, the Crown has never charged a criminal conspiracy with respect to speech in the House of Commons,[51] although the Star Chamber had created the offense of conspiracy, best indicates that the Crown and its legal advisers have been ignorant for over 400 years of the qualification now claimed by our government, namely, that the ancient privilege with respect to speech and debate claimed by Parliament did not extend to the alleged criminal motivation of speech there. The purported discovery by the executive power of the United States in 1965 of such an attenuated distinction comes too late.

3. The ultimate purpose of the Speech and Debate clause of our Constitution, as in the case of the Bill of Rights, was to encourage the utmost freedom of speech by any member

[51] In *Wason* the charge was not made by the Crown.

of the legislative branch of the government by precluding any inquiry, any investigation and any criminal charge with respect to the motivation or content of words spoken in the legislative chambers. To preclude the possibility of a baseless criminal charge which might intimidate and restrain freedom of speech, the Bill of Rights and later Article 1, Sec. 6 of our Constitution denied any authority to the executive power to make any charge with respect to speech, its purpose, or its motivation. *Tenney,* p. 377.

It is not the philosophy of the Speech and Debate clause to remove all possible sanctions against the legislator. His constituents, his business associates, his friends, the press and the public all have "coercive" power. Even the executive branch of the government is not helpless if it believes that a legislator has been faithless to his trust, with respect to speech in the Congress. It may refer the evidence of impropriety to the House or Senate. It may criticize and even castigate. But the executive has no jurisdiction to institute criminal proceedings with respect to the motivation of any utterances made in the legislative chambers and the judiciary has no jurisdiction to try such proceedings.

4. If the founding fathers had intended that the constitutional provision be narrowly interpreted, as the government contends, it may be assumed that they would have said so and in such event the provision would have read: "*for the content* of any speech or debate in either House, they shall not be questioned in any other place" or "for any speech or debate in any House *which is not made for a criminal purpose,* they shall not be questioned in any other place."

5. The government contends that the objective of the privilege to promote the independence of the legislature

would be subverted if the privilege could be used to protect the legislator "in the very act of forsaking that trust in favor of a private allegiance" (Gov't Brief, p. 27). In our discussion of *Tenney* we showed that the test of the application of the constitutional prohibition may not depend upon whether the executive claims a dishonest or criminal purpose because that prohibition is not cast in terms of propriety or impropriety, or rightful or wrongful conduct; on the contrary its prohibition is absolute. The question is not whether a member of Congress should be punished for a venal or otherwise improper speech but by what tribunal this shall be done—the House, the Senate or the Courts. Article 1, Section 6 directs that it may be done only by the House or Senate.[52]

6. Practical considerations point up the illusion of the government's attempt to distinguish between the content of speech and an alleged antecedent agreement giving rise to the speech. It is not realistic to believe that any prosecution would ever occur without regard to the content of a particular speech. One cannot visualize a criminal charge involving the relationship of a speech in the Congress and a gift or political campaign contribution in the case of any well known leader of a national political party because such a charge would be promptly labeled a political perse-

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[52] Nor is the power of the Congress to punish a member for unethical conduct inadequate. Either House is empowered by Article I, Section 5 to punish a member for disorderly behavior and by a vote of 2/3rds to expel a member. The power to punish extends to all cases where the offense is deemed inconsistent with the trust and duty of the member and in a proper case a member may be imprisoned. *Kilbourn v. Thompson,* 103 U.S. 168 (1881); *Re Chapman,* 166 U.S. 661, 669 (1897); *Marshall v. Gordon,* 243 U.S. 521, (1917); *McGrain v. Daugherty,* 273 U.S. 135, 172 (1927). The possibility that the Congress may abusively or oppressively exercise a constitutionally granted authority affords no ground for denying the power. *McGrain v. Daugherty,* p. 175.

cution. Only the obscure or the obnoxious would need to fear the heavy hand of executive power. The innovator and the radical speaking against the current and strongly held majority view would be the most likely objects of such a conspiracy charge. It is to be doubted that a conspiracy charge involving speech in Congress would be initiated or could be sustained where a Congressman, who is a member of one of the two major parties spoke in support of the position of his party. It would be too much to expect the prosecution of a member of Congress who spoke in support of presidential policy. It is beyond belief that a Congressman would be claimed to have conspired to make a speech for compensation calling for the creation of a national cultural center, or calling for a change in the color of service uniforms, or calling for the inscription of the Lord's Prayer on the capitol steps, or calling for the adoption of the chrysanthemum as the national flower. But when a speech is made in favor of the "wrong", the unpopular, side of a hot political "potato", as in this case, then a prosecution would be more likely to be made by the executive power and more likely to be successful. Thus the content of a speech and a criminal charge of conspiracy are not separable.

7. In their arguments to the jury government counsel contended that Congressman Johnson must have been influenced in giving his speech by the $500.00 campaign contribution he received from Robinson, and in its brief in the Fourth Circuit the government stated that "the government certainly did not have to prove that the Congressman's *sole* motive in giving the speech was to receive compensation or to aid Edlin or Robinson . . ." (Gov't Brief in the Fourth Circuit p. 32). Thus the prosecution correctly confessed that under the conspiracy charge it was not necessary even to prove an antecedent agree-

ment with respect to the speech or that it was even necessary for the government to establish that Johnson was employed, or even consciously agreed, to make a speech for a campaign contribution. According to the government's view, in which we concur, all that was necessary was for the jury to find that in making his speech Congressman Johnson was influenced in part by a campaign contribution made 10 days before he spoke or by a wish to aid Edlin or Robinson.

8. The cynicism of the government's position is best indicated by the fact that historically the greatest corrupter of the legislative branch of the government has been the executive power. "William, like Charles II and James II had found that it was necessary to corrupt the House of Commons in order to manage it."[53] The government accurately refers to numerous efforts made by the Crown and its ministers, including George III and Walpole, to bribe members of Parliament (Gov't Brief, p. 27, 28). We know that even today members of Congress are rewarded or punished by the executive power. They are rewarded for their support and punished for their opposition by the granting and withholding of patronage or presidential favor. Is it conspiracy to defraud the government of his faithful services for a member of Congress to make a speech defending the position of the administration with the understanding that a supporter will receive a lucrative administrative position? Is "compensation" limited to a money gift or a political campaign contribution, or is compensation to be deemed to include the benefits of presidential favor? Yet it would be too much to expect the Attorney General to attack his own employer by seeking an indictment in such circumstances.

9. The comparatively slight burden of proof upon the

[53] *History of English Law,* VI Holdsworth (Metheun, 1924) p. 246.

government under Section 371 is an important factor for consideration in determining whether a Section 371 conspiracy charge relative to speech in the Congress is prohibited by the Speech and Debate provision. Any member of Congress confronted with such an accusation upon mere proof of the gift and the speech must explain his purposes in making the speech and demonstrate that he was not influenced by the gift. This case illustrates the grave dangers involved in a conspiracy charge leveled at the motivation of speech delivered in Congress. As the Fourth Circuit pointed out, the end result was an inquisition into Congressman Johnson's motivations (337 F.2d 189, 204), a disgraceful inquiry in which he was compelled upon direct examination and cross-examination to give the Court and jury a detailed explanation of his thoughts and purposes with respect to his speech. This inevitable and shocking procedure could not but have chilling effects on the freedom of expression of every other member of the Congress.

10. The government attempts to separate the inseparable when it claims that it was not challenging the content of the speech but only its venal purpose. The motivation of speech or debate is so related to content they are indistinguishable for no words are spoken or written without purpose. When the Tudors, Charles I and James I leveled their charges of treason and sedition against members of the Commons for their legislative utterances, intent was an inherent element of the offense. A speech has no meaning without reference to its motivation and the effort of the government to distinguish between an attack upon the spoken word and an attack upon the criminal purpose of the word involves sophistry as well as an invitation to the emasculation of the constitutional principle.

Modern psychology teaches that the motivation or causation of any human action involves a difficult, complicated, perplexing inquiry. Human action is subject to unconscious as well as conscious influences involving the life of the individual, his environment and his personality.[54] This must be particularly true of human utterances. For a jury to be permitted to speculate with respect to the causation of a particular utterance in the Congress, i.e., whether a speech there was caused or influenced by a political campaign contribution, would require it to be gifted with a talent even unclaimed by the philosopher, psychologist or psychiatrist.

11. The government postulates the hypothetical situation of a criminal agreement to make a speech when the speech is not in fact delivered. It then argues that in that case a charge of conspiracy to defraud would not be barred by Article 1, Section 6 (Gov't Brief, p. 11, 18). The theoretical nature of such a situation is indicated by the obvious fact that in such a case a conspiracy charge would be almost impossible to initiate or to sustain. Indeed it is inconceivable that in such a situation a successful prosecution could be maintained. This hypothesis does not rise to a constitutional level because, if there is no speech or debate to be questioned, the constitutional privilege is not involved. On the other hand, when a congressional speech, allegedly the object of an unlawful agreement is made, the danger is ever present, real and substantial, that the charge of an unlawful agreement is merely a front for an actual attack on the speech and thus nothing less than a

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[54] Edward B. Titchner, *A Textbook of Psychology,* p. 468 (N.Y. 1913); W. S. Taylor, *Dynamic and Abnormal Psychology,* p. 82, 86, 88, 400, 401, 409, 410 (N.Y. 1954); Gardner Murphy, *Personality. A Bio-Social Approach to Origin and Structure,* p. 88, 89, 127 (N.Y. 1947); R. F. Peters, *Concept of Motive,* (London 1965).

devious (or at best ingenuous) attempt to circumvent the provisions of Article I, Section 6.

12. The government's dislike for Article 1, Section 6 has caused it to suggest an interpretation of the Speech and Debate clause, which if accepted, would emasculate, if not destroy, that privilege. Under its interpretation even an untruthful speech could qualify as a "defrauding of the government" under Section 371 as construed by the government and the District Court. The antecedent agreement to make the false speech would be the conspiratorial agreement under Section 371. The speech would qualify as the overt act required by Section 371. In such a case government counsel could say, as they do here, that the content of the speech was not under attack. Thus, the Speech and Debate clause would seem to lose all vitality if the government's view of that clause were accepted.

13. Article 1, Section 6 is founded on the assumption that our system can tolerate or countenance sin at least to the extent that we deny a judicial remedy in the limited area of speech and debate. It is this nation's view that in the long run our governmental system will benefit from the unrestrained, uninhibited speech of legislators who have no reason to fear that the system can turn on them for their utterances in that most dreaded way, criminal prosecution. Such an assurance is only possible when the privilege is available to those whom the executive suspects of guilt as well as to those who are believed innocent of any wrongdoing. If the privilege does not have this meaning, it is without value. This Court made this perfectly clear in *Tenney*. If the government is free to charge that a speech delivered on the floor of Congress was motivated by a money payment the high objective of the privilege is not satisfied. A pall of fear would hang over the Congress. The price of such curtailment would be more than society

can afford to pay. Once this is recognized it becomes readily apparent that the government's argument that the "agreement" to make a speech and the content of the speech should be distinguished in determining the scope of the privilege is nothing short of constitutional heresy.

14. In determining whether the Fourth Circuit was correct in holding that this conspiracy charge violated the Speech and Debate provision of the Constitution, this Court in the final analysis must make a choice of values. On the one hand is the litany of the government that there should be no barrier to the criminal prosecution of a member of Congress for agreeing to make a venal speech and the needs of society demand prosecution and punishment. History records that there has never been a criminal charge by the Crown in a court of England with respect to legislative speech since the case of Sir John Eliot in 1629 and none in the annals of the federal and state courts of this country before this case. The very fact that there has never been such a prosecution in almost 350 years best indicates that there has been no social need for it. Members of the legislative branch of the government are subject to prosecution for every act (excluding speech and its motivation in the Congress) made a federal or state offense. In the tight limited area of legislative speech and debate history does not suggest that numerous legislative wrong-doers have been escaping punishment for venal speeches.

Even if the government could demonstrate that it was socially desirable that the maker of a venal speech in the Congress be prosecuted by the executive and be punished by the judiciary upon the assumption that criminal prosecution is the panacea for all sin, that social good is far outweighed by other values.

There are no crying social demands that the Speech and

Debate provision of the Constitution be narrowly construed, curtailed or emasculated. No legal or other scholar has ever advocated it; no member of the Senate or the House has ever proposed the possibility. Thus the government has failed to establish that there is a recognized social benefit in restricting the Speech and Debate clause.

15. The only way the Government could even attempt to question this speech or any other speech made in the Congress is by way of a charge under this Section 371 conspiracy statute. The collaboration by a member of Congress with others in the making of a speech, the making of a speech in the Congress due to self-interest or for personal gain and the distribution of copies of a speech are not substantive offenses under any criminal law of the United States. The Government and the District Court conceded that the constitutional provision precludes the Government from making a charge of treason, sedition or criminal libel with respect to a speech made in the Congress. Yet, this concession is meaningless because the constitutional definition of treason precludes any charge of treason from being leveled at speech or debate; there have been no sedition laws in the United States since 1800; and there has never been a federal criminal libel law. Thus, the Government's interpretation of the limited scope of this historic constitutional principle, if accepted, would effectively sterilize it from any utility or significance in the world in which we now live because the executive would be free to charge, and the judiciary to hear, an accusation that a member of Congress conspired to defraud the Government by making a speech in the Congress pursuant to an "antecedent agreement."

B

The Contention of the Government as to the Federal Bribery Statute Is Without Substance

Throughout its brief the government assumes that this case involves the constitutionality of the federal bribery statute rather than the validity of the conspiracy charge under Section 371.

The federal bribery statute made it an offense for one to give to a member of Congress, and for a member of Congress to accept, a bribe to influence "his action, vote or decision" "on any question, matter, cause or proceeding which may at any time be pending in either House" (18 U.S.C. Sec. 205; revised in 1962 as Sec. 201).[55] The government did not charge Mr. Johnson with violating this statute or with conspiracy to do so. Accordingly any consideration by the Court of its validity would violate two of the Supreme Court's most frequently repeated canons of constitutional decision. A constitutional question is not decided when it is not necessary for the Court to do so. The Court will not decide a constitutional question which upon the facts is not presented for decision.

The government could not have charged Mr. Johnson with violating the federal bribery statute or conspiring to do so, because its terms limited the offense to official action, vote or decision with respect to pending matters. The speech, which Mr. Johnson made in the House of Representatives was unrelated to any proposed legislation or to any other matter pending in the House. His speech could not be deemed a vote, decision or other official act with respect to pending matters.

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[55] It is significant also that all statutes forbidding the acceptance of bribes by members of state legislatures carefully refrain from including in their proscription speech or debate.

The government could not have charged Mr. Johnson with violating this statute or conspiring to do so for the additional reason that the statute carefully refrained from including speech or debate in the proscribed conduct. The cardinal principle that a penal statute must be narrowly interpreted would preclude the Court, in interpreting this statute from extending it to include speech or debate especially when the great tradition of legislative liberty has for so long protected utterances and their motivation in legislative chambers. *Tenney*, p. 377.

An analysis of the government's assumption that the federal bribery statute is at the heart of this case and that to undermine its applicability to members of Congress would be dire makes clear that the statute affords the government no aid either directly or by way of analogy.

1. There never has been a conviction of a member of Congress under the bribery statute; indeed so far as we can ascertain there has never even been a prosecution. Thus the constitutional plan of remitting Congressional discipline to the respective Houses historically has had the continuing acquiescence of the executive power. Perhaps as the government suggested in its petition for certiorari (p. 7) the decision in this case will promote the concentration by Congress on its problem of self-discipline which is the corollary of its constitutional prerogative.

2. The only relevance of the bribery statute we can perceive in this case is that, in contrast to the defrauding provision of Section 371, it indicates a Congressional intention to apply its sanction to the vote of a Congressman. In contrast, Section 371 clearly does not apply to anything which could be denominated Speech or Debate. Thus if the bribery statute has any pertinence, it tends to confirm our showing at pages 70 to 76 herein that Section 371 was never intended to apply to speech or debate in Congress.

3. Since neither the constitutionality nor any other aspect of the bribery statute is involved in this case, speculations about the validity of that statute, including the government's, are futile. Suffice it to say that the notion of the government that the decision of the Fourth Circuit, holding the conspiracy charge violated the Speech and Debate provision of the Constitution, casts doubt upon the validity of the bribery statute is not correct. Doubt as to the validity of the bribery statute was created by the decision of this court in *Kilbourn* in 1881 and in *Tenney* in 1951 holding that the Speech and Debate provision applied to *all* official acts of members of Congress. A decision that the Speech and Debate provision of the Constitution applies to the motivation and content of speech in the House of Representatives could not have any effect upon the validity of the bribery statute as applied to a vote or other official conduct within its proscription.

C

The Other Contentions of the Government Have No Merit

1. The government argues that the guarantees of a fair trial in the Federal Constitution make a judicial forum of a conspiracy charge with respect to speech in the Congress more attractive than a legislative one. (Gov't Brief pp. 36-37). This approach would have been permissible argument in the Constitutional Convention of 1787 in opposition to the Speech and Debate clause. It has been foreclosed by the enactment of that clause and by its interpretation by this Court in *Kilbourn* and *Tenney*.

Some of the factors which made the resolution of the argument by the Constitutional Convention the appropriate one are illustrated by the case at bar. In a contest which

became the focus of local mass media for 2½ months the norms of a judicial trial certainly were not as protective as those of a legislative forum where the perception and understanding of colleagues would have promoted appreciation of the realities of the situation. Likewise, the outcome of a judicial trial is not necessarily more safeguarded from factors extraneous to the dictates of justice than a legislative trial would be. The facts of this case—the timing of the indictment 3 weeks before the election, the indefinite character of the conspiracy charge, the intense competition between state savings and loan associations and Federal savings and loan associations throughout the country, the witnesses, the publicity, and the nature of the trial all suggest that a court trial may become a dangerous vehicle quite as readily as may a legislative inquiry.

2. The government claims that the cases interpreting the scope of the *judicial* privilege make it clear that a judge cannot be held liable for the content of any judicial opinion but a judge is not immune from a charge of accepting a bribe in exchange for an opinion, judgment, or decree. (Gov't brief 11-13) Neither the policy nor the scope of the judicial privilege are even remotely comparable to that of the legislative privilege.

First there is no constitutional provision in the judicial area equivalent to the speech and debate clause which, as to legislative speech, states in unequivocable terms that it may not be questioned outside the Congress. The presence of an explicit constitutional provision as to legislators and its absence as to judges offers a clear distinction between the two privileges. The second feature distinguishing these privileges is the fact that the constitutional privilege of speech and debate in the Congress is the primary privilege without which all other privileges would be comparatively meaningless, (Story, Commentaries on the Constitution,

Vol. I, 5th Ed. 1891, p. 630). This aspect of the Speech and Debate clause indicates, as this Court stated in *Tenney* and *Kilbourn,* that aside from its unqualified directive, that clause must be liberally construed. Third, the constitutional scheme for protecting the integrity of the judiciary—life tenure, no diminution in salary—is necessarily different from that for Congress because of the difference in the nature of the problems. The scheme for protecting Congress is complete freedom of speech and debate and the provision that each House is the judge of the conduct there of its members.

3. In contending that the objective of the privilege would be subverted if the privilege could be used to protect a legislator "in the very act of forsaking that trust in favor of a private allegiance" (Gov't Brief p. 27), the government claims that the executive power is free to question whether a member of Congress was influenced in making a speech in the Congress by a "private allegiance" which inevitably involves a searching inquiry into his motivations.

"A Senator of the United States is an ambulant converging point for pressures and counter-pressures of high, medium and low purposes."[56] "Economic pressure, however, is only the beginning for a Senator. In the more intimate sense there is the pressure of constituents, of lobbies, of his own party and of the White House."[57] Whether a Senator or a member of the House of Representatives was influenced in making a speech by a "private allegiance" would involve a psychological study of his conscious and subconscious mental processes.[58] It would involve not merely an impossible task for a jury but the

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[56] Citadel, p. 135.

[57] Citadel, p. 138-9.

[58] See note 54.

annihilation of the Speech and Debate provision of the Constitution and an outrageous invasion of the sanctuary of a member of Congress—his mind.

4. The government fences with windmills when it contends that the Fourth Circuit "may have held" Article 1, Section 5 restricts the power of Congress to provide for judicial punishment of its members (Gov't Brief p. 31). This constitutional provision gives each House authority to punish its members and, with the concurrence of two-thirds, to expel a member. The Fourth Circuit's decision was based on the Speech and Debate Clause of Article 1, Section 6. That Court merely referred to Article 1, Section 5 to indicate that the Senate and House each has the constitutional power to impose sanctions with respect to improper or unethical speech in its chamber.

5. The government contends that a small portion of the testimony "in the government's case in chief" related to Johnson's speech in the House of Representatives and "the government clearly proved its case [under the conspiracy charge] independent of the speech or inferences therefrom" so the Speech and Debate clause did not warrant a reversal. (Gov't Brief pp. 16, 17). When the Court of Appeals found that "one-half of the testimony introduced at the trial related to the speech" (p. 190) the Court was, of course, referring to one-half of the testimony relating to Johnson and accordingly the statement was an accurate one.[59]

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[59] A mass of evidence came in with respect to Boykin's land transactions in Southern Maryland and Virginia, the purchase price paid for these tracts of land, their sales by Boykin to land companies formed by the savings and loan associations and the value of the tracts as compared with the purchase price paid for them—all for the purpose of showing (or negating) that Boykin participated in the alleged conspiracy charged in the First Count by having a personal financial interest in the dismissal or postponement of the mail fraud case against Edlin.

The government is mistaken in saying that no testimony "concerned the content or giving of the speech" (Gov't Brief p. 16). Much of it did and Johnson was examined and cross-examined at length on the witness stand with respect to his motivation in giving the speech (Tr. 3191-3204, 3786-3831), the source of material in it, its preparation and drafting (Tr. 3802-03, 3814-3816), and he was even interrogated as to particular statements contained in it (Tr. 3805, 3815).

The District Judge instructed the jury that the jury might find that the government proved "2 separate conspiracies, the first beginning on April 1, 1960 to defraud the United States of its governmental functions largely by the making of the speech by defendant Johnson and distribution of reprints thereof; the second, beginning in 1961 to defraud the United States" by unlawfully seeking the dismissal or postponement of the pending criminal case. (App. 93). Thus the

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All of the extensive testimony relating to events in the year 1960 would seem to bear no relationship to the charges of the substantive counts that Johnson accepted specific checks as compensation for his visits to the Department of Justice after February 1961. This 1960 material included Johnson's speech of June 30, 1960, which was introduced in evidence by the government (App. 258-260) discussions of Heflin, Robinson and Edlin about their hopes that a Congressman might make a speech defending state savings and loan associations, representations made to Johnson as to the unfair treatment being accorded the state savings and loan associations by the federal savings and loan associations, the motivation and content of the speech, the $500.00 campaign contribution of June 20, 1960, by Robinson to Johnson, the orders for the reprints of the speech and its distribution and the use made of them by the savings and loan associations, etc.

The testimony of the following witnesses related exclusively or almost exclusively to Mr. Johnson's speech of June 30, 1960: Sadie Goldman (App. 160); Martin Heflin (App. 172); Bradford Wyckoff (App. 205); Russell O. Hickman (App. 246); Frances Kiernan (App. 253); Earl Kunkel (App. 255); and Manual Buarque (App. 466, App. Vol. III, p. 36). The testimony of other witnesses, including Johnson and Robinson, related in part to the Johnson speech.

District Judge focused the attention of the jury upon Johnson's speech in the House of Representatives in as definitive a way as was possible. In argument to the jury government counsel placed major emphasis upon Johnson's alleged venal speech. (App. Vol. III 233-249). The notion implied by the government that the evidence with respect to the speech was merely incidental to the all embracing conspiracy charge is without substance.

6. Underlying the narrow construction of the Speech and Debate clause sought by the government is the assumption that the historic reason for it has evaporated. The government's contention presupposes that the executive can now be trusted in the year of our Lord 1965 to act impartially in the public interest in all matters of law enforcement. The Constitution was constructed upon a very different basis, namely, that the exercise of power by men temporarily invested with such power must be carefully circumscribed.

It is significant that the assertion by the executive of the power to make a criminal charge with respect to speech in a legislative chamber, unprecedented since the case of Sir John Eliot in 1629, almost 350 years ago, comes at a time when the overriding critical political problem in our world is the undue development of executive power. In Asia, Africa, Latin America and Eastern Europe there has been a steady deterioration of the vitality of parliamentary power accompanied by an extraordinary enhancement of executive power. "As society becomes more equalitarian it tends increasingly to concentrate absolute power in the hands of one single man." "Caesarism is not dictatorship, not the result of one man's overriding ambition, not a brutal seizure of power through revolution. It is based on a specific doctrine of philosophy. It is essentially pragmatic and untheoretical. It is a slow, often century-old un-

conscious development that ends in a voluntary surrender of a free people escaping from freedom to one autocratic master."[60]

Thus when the transcendental problem of government almost everywhere is the maintenance of constitutional restraint upon executive power, the executive again in this case challenges legislative liberty.

IV

IN ENACTING THE CONSPIRACY STATUTE CONGRESS DID NOT INTEND THAT IT APPLY TO THE MOTIVES OF A MEMBER OF THE HOUSE OF REPRESENTATIVES IN MAKING A SPEECH THERE.

To sustain Count One the Court must find that Congress in enacting the conspiracy statute *intended* that it should apply to a conspiracy relative to a speech in the House of Representatives for the personal profit of a member.

In *Tenney,* members of the Legislature of California were alleged to have violated an 1871 federal civil conspiracy statute which defined the conspiracy with specificity and provided for a civil remedy. This Court held that a basic issue was whether Congress, in enacting the statute, had intended to include within its coverage official acts of a member of a state legislature. The Court determined that Congress did not have such an intention.

The Court said (p. 376):

> "Did Congress by the general language of its 1871 statute mean to overturn the tradition of legislative

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[60] *The Coming Caesars,* de Riencourt (1957). The author detected such a trend in the United States in the growing "father complex" incident to the Presidency with its vast powers.

> freedom achieved in England by Civil War and carefully preserved in the formation of State and National Governments here? Did it mean to subject legislators to civil liability for acts done within the sphere of legislative activity? Let us assume, merely for the moment, that Congress has constitutional power to limit the freedom of State legislators acting within their traditional sphere. That would be a big assumption. But we would have to make an even rasher assumption to find that Congress thought it had exercised the power. These are difficulties we cannot hurdle. The limits of Sections 1 and 2 of the 1871 statute—now Sections 43 and 47(3) of Title 8—were not spelled out in debate. We cannot believe that Congress—itself a staunch advocate of legislative freedom—would impinge on a tradition so well grounded in history and reason by covert inclusion in the general language before us."

Although the statute in that case was designed to provide a civil remedy for a conspiracy to violate civil rights, the Court, as it had done in *Kilbourn,* deemed the Constitutional principle of Article 1, Section 6, which by its terms only related to speech and debate in the Congress, to apply to *all* official acts of legislative members. Although Article 1, Section 6 only related to speech and debate in the *Congress,* the Court deemed its tradition of legislative freedom of such paramount significance that the Court extended it to all official acts of members of a *state* legislature.

The Johnson case does not relate to the acts of members of a state legislature, nor even to official acts of a member of the Congress unrelated to speech and debate; it relates to a speech and its motivation in the House of Representatives, the very heart and core of Article 1, Section 6. As in the case of the 1871 civil conspiracy statute involved in *Tenney,* the limits of the 1867 conspiracy statute involved here "were not spelled out in debate" and there is nothing

in its general language to suggest that Congress could have believed that it was sanctioning a charge of conspiracy to defraud the United States of the faithful services of a member of Congress by making a speech for personal profit on the floor of the House of Representatives. As this Court said in *Tenney* "Did it [the statute] mean to subject legislators to civil [criminal] liability for acts done within the sphere of legislative activity?". The answer the Court gave to the question posed is as plainly applicable to this 1867 criminal conspiracy statute as to the 1871 civil conspiracy statute involved in *Tenney*. Indeed the reasoning of the Court there has a far more solid and logical basis as applied to the situation here than in *Tenney* which involved merely a civil liability since this case involves a penal liability which under established principles must be interpreted strictly for the protection of the rights of an accused.

Is Congress' vital freedom of speech and debate to be at the mercy of a vague, imprecise, all-inclusive charge under a general 1867 conspiracy statute? The federal courts, particularly the district courts, have steadily expanded the meaning of the statute but no Court has ever held before[61] that in enacting the statute Congress could have remotely intended "to overturn the tradition of legislative freedom achieved in England by civil war and carefully preserved in the formation of State and National Governments." Under the teaching of *Tenney* Congress cannot be deemed to have had any such intention.

This conclusion is confirmed by the cardinal principle that, when a statute is reasonably susceptible of 2 interpretations, by one of which it is unconstitutional and by

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[61] Unable to distinguish *Tenney*, in sustaining Count One the District Court ignored it.

the other valid, the Court prefers the meaning that preserves to the meaning that destroys.[62] It is also confirmed by the established principle that, if a statute may be accorded several interpretations, that which involves serious constitutional problems will be avoided.[63] In the case of this penal statute there must be assurance of reasonable certainty in concluding that Congress by necessary implication intended to extend the penalties of the statute to an alleged conspiracy to make a speech for compensation in the Congress. The doubt and ambiguity concerning the scope of the acts forbidden by Sec. 371 beyond those clearly and proximately connected with a conspiracy to defraud the United States of its money or property raise greater doubts that Congress could have meant to encompass within its penal provisions a criminal purpose as to a speech in the House of Representatives.

In *United States v. Gradwell,* 243 U.S. 476 (1917) this Court invalidated an indictment under this same conspiracy statute on the ground that Congress had not intended to include the alleged offenses within the scope of the "defrauding" part of Section 371. There the government charged that the defendants conspired to defraud the United States "in the matter of its governmental rights" by bribing voters in elections of members of Congress. This Court held the defrauding part of the conspiracy statute inapplicable on the ground that it was not the purpose of Congress that it would be so applied and distinguished cases where the conspiracy charged related to the operations of the federal government.

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[62] *Delaware & H Co. v. United States,* 266 U.S. 438, 443 (1925); *Knight Templars' & M. Life Indem. Co.* v. *Jarman,* 187 U.S. 197, 205 (1902).

[63] *International Assoc. of Machinists v. Street,* 367 U.S. 740, 749 (1961); *Crowell* v. *Benson,* 285 U.S. 22, 62 (1932).

Although in its general proscription of conspiracy to defraud the United States, Section 371 did not exclude frauds with respect to the election of members of Congress, the Court made the exclusion in interpreting the Section by reason of its limited purposes. As an aid in ascertaining congressional intent the Court focused on the ability of Congress to resort to its jealously guarded power to judge of the elections, returns and qualifications of its members under Article I, Section 5, Clause 1 of the Constitution.

The reasoning of the Court in *Gradwell* is especially pertinent here because Section 6, Clause 1 of Article I prohibits speech or debate in the Congress from being questioned in any other place and each House may punish its members for disorderly behavior and with the concurrence of 2/3rds even expel a member. The Constitution reserved to the Congress the exclusive power to determine the propriety or impropriety of speech; it granted the Congress the non-exclusive power to judge of the elections, returns and qualifications of its own members.

Thus in the case at bar, as in *Gradwell,* there is a constitutional provision conferring paramount authority upon the Congress to deal with the alleged improprieties. The executive has in effect claimed that a portion of the Congressional prerogative has been transferred to it by Section 371 as regards elections *(Gradwell)* and speech in this case. The Congressional prerogative to act as its own disciplinarian is surely a more vital power when a speech by a Congressman is questioned than when interference with a Congressional election is involved. This Court may not hold that Congress intended in enacting Section 371 to surrender a part of its prerogatives with respect to speech in the Congress when the Speech and Debate Clause, unlike the constitutional provision as to

elections, is cast in terms of a prohibition of executive action.

Again in *Hammerschmidt* this Court, in spite of the general language of the conspiracy statute and the Court's expansive *obiter* as to the meaning of its defrauding part, held that it did not reach a conspiracy to defraud the United States by obstructing the functioning of the government by an open defiance of the enforcement of a federal law. There the government claimed that the defendants had published and circulated material designed to elicit disobedience to the provisions of the Selective Service Act. Implicit in the Court's decision must have been a recognition that a contrary interpretation would have involved serious questions under the First Amendment. "The reluctance of the courts to expand the coverage of criminal statutes is particularly important where, as here, the statute results in censorship."[64] The Court held that such an application of the statute was not within the intention of the Congress in enacting Section 371.

In view of the evident doubt as to the reach of Section 371 to encompass very different acts from those which were visualized by the Congress in its enactment, the prior determination by this Court in *Tenney* with respect to a comparable conspiracy statute and in *Gradwell* and *Hammerschmidt* with respect to the very statute in question and the vitality of the great principle of legislative liberty in the Speech and Debate provision of the Constitution, it is submitted that this Court should determine that Congress in enacting the conspiracy statute did not intend that it should apply to a conspiracy relative to speech in the House of Representatives for the alleged personal profit of a member.

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[64] *United States v. Alpers*, 338 U.S. 680, 686 (1949); see also *Smith v. California*, 361 U.S. 147 (1959).

V

THE INDEFINITE NATURE OF THE CONSPIRACY CHARGE VIOLATED THE DEFENDANT'S FIFTH AND SIXTH AMENDMENT RIGHT THAT THE INDICTMENT CLEARLY INFORM HIM OF THE OFFENSE CHARGED

A

The validity of any conspiracy charge must be evaluated and determined by the alleged purpose or objective of the conspiratorial agreement charged. The offense is the conspiracy itself, namely, the unlawful agreement because the offense becomes complete when the agreement is made. The validity or invalidity of the conspiracy charge as well as the scope of the conspiracy depends therefore upon the asserted purpose of the conspiracy.[65] The conspiracy must be sufficiently charged and cannot be aided by allegations of overt acts.[66] When the government alleged, as here, a

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[65] *Goldstein, Conspiracy to Defraud the United States,* 68 Yale L. J. 404, 406 (1959): "The agreement to accomplish the prohibited purpose furnishes, without more, the basis for criminal liability." "The gist of the offense of conspiracy as defined by [Section 371] is agreement among the conspirators to commit an offense attended by an act of one or more of the conspirators to effect the object of the conspiracy." *United States* v. *Falcone,* 311 U.S. 205, 210, (1940). See also Note, *The Conspiracy Dilemma: Prosecution of Group Crime or Protection of Individual Defendants,* 62 H.L.R. 276, 278, (1948) and *United States* v. *Deutsch,* 243 F.2d 435 (3rd 1957).

[66] "The crucial question . . . is the scope of the conspiratorial agreement for it is that which determines . . . whether the act relied on as an overt act may properly be regarded as in furtherance of the conspiracy." *Grunewald* v. *United States,* 353 U.S. 391 (1957) "The only effect of the requirement [of Section 371] that an overt act shall be shown is to permit an abandonment of the conspiracy in the meantime and the consequent avoidance of the penalty which the statute imposes." *United States* v. *Manton,* 107 F.2d 834, 838 (1938). One corollary of this principle is that "a bill of particulars cannot save an invalid indictment." *Russell* v. *United States,* 369 U.S. 749, 770 (1962).

conspiracy to defraud the United States under Section 371, whether the offense charged is within or without the statute must be determined by the "charging" provision of the indictment which defines the agreement of the parties to the alleged conspiracy as to its objects.

The central charging provision of the indictment here is paragraph (14) (App. 4, 5) which alleges a conspiracy to defraud the United States of its governmental functions and rights "hereinafter described, to wit:" Subparagraphs (a), (b), (c) and (d) then define 4 separate and independent governmental rights. Paragraph (14)(a) concerns the government's right to have its business and affairs and particularly the official business of the Department of Justice conducted honestly and impartially. Paragraph (14)(b) concerns the government's right to have its officers and employees and particularly personnel of the Department of Justice free to transact the official business of the United States unimpaired by the exercise of improper influence. Paragraph (14)(c), almost unintelligible, concerns the government's right to have the functions and duties of Johnson, an official member of the House of Representatives, exercised free from dishonesty resulting from personal and pecuniary interest in the success of Edlin, Robinson, First Colony Savings and Loan Association, First Continental Savings and Loan Association, Charles County Land Company, and Tensaw Land and Timber Company in attempting to get officials of the Department of Justice to postpone the trial of charges contained in an indictment and its eventual dismissal. Paragraph (14)(d) concerns the right of the government not to be deprived of the faithful services of Johnson as a member of the House of Representatives uninfluenced by corruption and uninfluenced by payments of money and other valuable considerations to him by other defendants as compensation for services rendered and to be rendered by Johnson

in behalf of the other defendants in relation to matters pending in the House of Representatives and for services rendered by Johnson before the Department of Justice in relation to proceedings in which the United States was directly interested.

These four stated purposes of the conspiracy are so vague, general and indefinite that under them the Government would be entitled to offer in evidence in support of the charge testimony as to any and all conduct of *any* defendant with respect to *any* matters pending before *any* administrative agency or department of the government or in the House of Representatives. Under the charging part of the First Count, the Government could introduce evidence that any defendant attempted to influence *any* executive officer of the government as to *any* matter or *any* member of Congress with respect to *any* legislation. The purposes of the conspiracy may be deemed limited only by the inchoate expression "to defraud the United States of and concerning its governmental functions" with respect to each of the four general rights specified. The alleged purposes of the conspiracy include *omnia omnibus.*

Paragraphs (15) to (25) inclusive, of the First Count allege definite matters "as a part of said conspiracy" (App. 5, 6) but these paragraphs do not purport to, nor can they, limit or restrict the charges as to the unlimited purposes of the alleged unlawful conspiracy contained in paragraph (14). These later paragraphs do not allege the purposes or objectives of the claimed unlawful agreement but allege "parts" of what the defendants supposedly did under the unlawful agreement defined in paragraph (14).

The Fourth Circuit was in error in holding that paragraphs (15) to (25) rather than paragraph 14 stated the objects and purposes of the conspiracy. 337 F.2d, p. 185.

This strained interpretation of the conspiracy count is not only repudiated by the language used but it was emphatically rejected by the government in the course of a pre-trial hearing. There the United States Attorney made clear that it was the position of the government that paragraph (14) did define the purposes of the conspiracy. He stated to the Court:

> If "there is another major area which we feel falls within the pattern of (14)(d)" it can be proven. (Tr. 29).[67] To an inquiry by the Court as to what he meant by "major area" the United States Attorney said "let us suppose that Congressmen Boykin and Johnson unbeknownst to us hire a Senator and they all went to the Vice President to try and have a speech made on the floor of the House about savings and loan associations or something" [sic] (Tr. 29). The Court later said "You were not limiting yourself to those because you are saying that in addition to those you claim the right to prove anything provable under 14". United States Attorney: "That's correct." The Court; "According to Mr. Doub you said that." United States Attorney: "Yes." The Court: "And you certainly have not disclaimed it. Now I think Mr. Doub is right that if you are not limited in any way that you could prove under 14 almost anything, under (14) (a), (b), (c) and (d)." United States Attorney: "Anything your Honor pertaining to a conspiracy among Johnson, Edlin, Boykin and Robinson, First Colony Savings and Loan, First Continental, Charles County and Leisure City and so on." The Court: "But all of them do not have to be in it. It is broad enough to cover any conspiracy between Johnson and Boykin for any money paid to either one of them to influence the vote of himself and the other on any subject that comes before the House of Representatives . . ." (Tr. 33) The Court: "There might be an appropriation bill that would bene-

[67] References here are to transcript of pre-trial hearing on December 7, 1962.

fit one of the properties owned by one of these corporations . . ." (Tr. 33)

Thus government counsel, who prepared this indictment and knew best its intended scope, interpreted paragraph (14) as defining the purposes of the conspiracy and he was insistent that the government was at liberty in developing its proof at trial to establish any matters within the indefinite scope of paragraph (14).

Even if paragraphs (15) to (25) with their allegations as to more definite matters "as a part of said conspiracy" could be considered to be included in the charging provisions as to the unlawful objects of the conspiracy, these stated *parts* of the conspiracy cannot be deemed to add up to the *whole* because the government was free under paragraphs (14) to offer in evidence as *other* "parts of the conspiracy" any relationship of any of the defendants to *any* of the officers or employees of *any* agency of the government.

Even if the government was mistaken in its pre-trial position and the District Court and the Fourth Circuit were technically correct in concluding that paragraphs (15) to (25) stated the objects of the conspiracy, a criminal charge of a felony may not be open to such differences of opinion. If reasonable men may differ as to the interpretation of a criminal charge, if the government may interpret that charge one way before trial and a contradictory way after trial on appeal, the charge is too vague and ambiguous to meet the tests of the Fifth and Sixth Amendments. The construction of an indictment may not be treated as though it is a will or corporate trust indenture.

Since the government was not required to allege more than one overt act and such acts cannot aid the validity of a conspiracy charge, can it be said that this charge of

conspiracy with its multiple, inchoate, indefinite objectives informed Johnson of the nature of the accusation in conformity with the Fifth and Sixth Amendments? As the Ninth Circuit said in *Terry v. United States,* 7 F.2d 28, 30 (9th 1925). "Conspiracy is not an omnibus charge under which you can prove anything and everything and convict for the sins of a lifetime."

The charge as to the unlawful objects of the conspiracy was divorced from reality. The First Count of the indictment said in essence that the defendants unlawfully agreed (1) to defraud the United States and its officials of its governmental functions including the faithful services of Johnson and Boykin and (2) to defraud the United States of faithful services of the executive officers of the United States including those of the Department of Justice. It would be difficult to believe that anyone anywhere would in actuality enter into such an artificial, scholastic and metaphysical agreement. No government should be permitted under the Fifth and Sixth Amendments to declare the objects of a "conspiracy" to defraud under Section 371 in such unlimited, uninformative, slippery terms.

As a consequence of the protean character of the alleged conspiracy, at the trial there were no conceivable standards for the admission of evidence under the conspiracy charge. Nor was there any knowable standard for the determination by the District Court of the sufficiency of the evidence under the First Count. If the government had offered evidence that in June, 1960, Johnson agreed to make a speech for compensation, would it be necessary for the government to submit under the First Count *any* evidence that in 1961 he made visits to Justice for compensation? Would it be sufficient for the government to offer evidence that Johnson made visits to the Department of Justice with respect to the

pending criminal case for compensation and submit no evidence as to the speech? In this event the conspiracy to defraud charge would have to be deemed nothing more than a conspiracy to violate Section 281, the conflict of interest statute involved in the substantive counts of the indictment. Was it necessary for the government to prove knowing false representations to an official of the Department of Justice when at common law the crime of deceit and fraud has universally required such a representation?

Would it be sufficient for the government to offer evidence that Johnson was, or might have been, influenced by the $500.00 political campaign contribution made 10 days before his speech defending Maryland state savings and loan associations? The government correctly asserted in the Fourth Circuit that under the conspiracy charge *"the government certainly did not have to prove that the Congressman's sole motive in giving the speech was to receive compensation or to aid Edlin or Robinson . . ."* (Gov't Brief in the Fourth Circuit p. 42). Thus it was not necessary for the government to establish that Congressman Johnson was employed, or even consciously agreed, to make a speech in consideration of the campaign contribution made June 20, 1960, 10 days before his speech. It was enough for the jury to find that the campaign gift was an influencing factor. This position of the government, with which we agree, also made clear that the government did not even have to prove that an "antecedent agreement" was made or that Johnson was even motivated in part by the campaign contribution; it was sufficient for the jury to find that he wished to aid Edlin or Robinson. A scintilla, a peppercorn, of evidence was sufficient under Count One.

Mr. Justice Jackson said in *Krulewitch v. United States* 336 U.S. 440, 453, "A conspiracy often is proved by evidence that is admissible only upon assumption that con-

spiracy existed. The naive assumption that prejudicial effects can be overcome by instructions to the jury . . . all practicing lawyers know to be unmitigated fiction . . ." Here a conspiracy was proved largely by hearsay evidence that was not even admitted against Johnson (page 10 herein). Yet counsel for the government hammered these statements, which Johnson was helpless to rebut, down the throat of the jury as the most convincing evidence of a conspiracy to make a speech for compensation in disregard of the ruling of the District Judge (Tr. 421-423) and on appeal the Fourth Circuit and the government blithly treat these hearsay statements as evidence of the conspiracy (Gov't Brief, 5, 6). So we have in this case the most conspicuous confirmation of the dangers of conspiracy procedure described by this Court in *Grunewald, Krulewitch* and *Kotteakos v. United States,* 328 U.S. 750 (1946).

The issue under the First Count of the indictment charging conspiracy to defraud the United States of its governmental rights was never clearly defined. Unable to formulate for the jury a meaningful purpose of the alleged conspiracy, the District Judge was compelled to refer to its objects "as alleged in the indictment." (App. 88). The District Judge then paraphrased for the jury paragraphs 14, 15, and 16 of the conspiracy count. (App. 90-93).

Under the formless conspiracy charge, Government counsel in argument to the jury also had no standards to apply to the evidence. In final summation to the jury, the United States Attorney argued repeatedly that Johnson had a "personal interest" in his visits to Justice and therefore the jury should convict under the conspiracy count (Tr. 6192, 6196, 6197, 6225, 6230) although Congress had not made it a federal offense for a member of Congress to communicate with an executive agency with respect to a pending matter when the member had a personal interest

in it.[68] Yet Count One was sufficiently all-inclusive to permit the United States Attorney to make this argument and for the jury to create an offense which Congress had not established.

To permit an open ended indictment as was presented in the case at bar to stand would be to ". . . allow the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment [and] would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of fact not found by and perhaps not even presented to the grand jury." *Russell v. United States,* 369 U.S. 749, 770 (1962). See also *Smith v. United States,* 360 U.S. 1 (1959). For this reason, the Fifth Amendment has been held to mean that an indictment to be valid must leave little open to the prosecutor or court in the construction of an indictment. If the offense is not plainly charged, it becomes charged only by a process of interpretation. When this is the case, there is no assurance that the grand jury would have charged the offense which the judge or prosecutor has found lurking in a dark corner of the indictment. "If the choice of one or more out of many unidentified crimes may be made by the prosecutor, then presentment by a grand jury will have become a useless historic ritual." *Van Liew v. United States,* 321 F.2d 664, 669, 672 (5th Cir. 1963).

The guaranty of the Sixth Amendment that "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusa-

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[68] The conflict of interest statute, 18 U.S.C. 281, made it an offense for a member of Congress to receive or agree to receive compensation for services rendered in relation to a proceeding before an administrative department.

tion; . . ." was likewise violated by Count One. "The vice of [this indictment] is that [it] failed to satisfy the first essential criterion by which the sufficiency of an indictment is to be tested, i.e., that [it] failed to sufficiently apprise the defendant of what he must be prepared to meet." *Russell v. United States,* 369 U.S. 749, 764 (1962); *United States v. DeBrow,* 346 U.S. 374, 377, 378 (1953); *Cole v. Arkansas,* 333 U.S. 196, 201, 202 (1948); *Berger v. United States,* 295 U.S. 78, 82 (1935); *Hagner v. United States,* 285 U.S. 427, 431 (1932); *Rosen v. United States,* 161 U.S. 29, 34 (1896); *Cochran and Sayre v. United States,* 157 U.S. 286, 290 (1895); *Potter v. United States,* 155 U.S. 438, 445 (1894); *United States v. Simmons,* 96 U.S. 360, 362 (1878); *United States v. Cruikshank,* 92 U.S. 542, 558 (1876).

In sustaining this count, the District Judge relied upon *Manton v. United States,* 107 F.2d 834 (2nd Cir. 1938) and *May v. United States,* 175 F.2d 994 (D.C. Cir. 1949) but it will be found that, although the conspiracy charge in each of these cases was broad, it was not comparable to that here. Count One of this indictment is without precedent.

The omnivorous allegations of paragraph (14) with respect to agreed efforts to obstruct governmental functions would permit the government's case to run the gamut from proof of a pact between Johnson and another party named in the indictment that Johnson would spit on a District of Columbia sidewalk to proof of a pact that Johnson would attempt the violent overthrow of the government of the United States. When an indictment is so open ended, the strictures of the Fifth and Sixth Amendments are violated.

VI

THIS COURT SHOULD REPUDIATE THE ALL EMBRACING CONCEPT OF SECTION 371 SOUGHT BY THE GOVERNMENT

A

The government did not elect to charge Johnson in the indictment with conspiring to commit an offense against the United States as authorized by Section 371. The indictment did not charge him with conspiring to commit any substantive offense established by the Congress, including Section 28[illegible]e conflict of interest statute involved in the substantive counts of the indictment or Section 205, the bribery statute. Instead the government elected to charge Johnson with conspiracy to defraud the United States of its governmental functions and of his faithful services under Section 371 as interpreted in *Haas* v. *Henkel*, 216 U.S. 462 (1910) and *Hammerschmidt* v. *United States*, 265 US 182 (1924).[68a]

Both the District Court and the Fourth Circuit relied on *Haas* and *Hammerschmidt* in sustaining the validity of the conspiracy charge. The District Judge's instructions to the jury paraphrased the *Hammerschmidt* dictum (265 U.S. at 188) as to the meaning to be accorded "defraud the United States".[69]

[68a] In *Glasser v. United States*, 315 U.S. 60 (1942) the *Haas* and *Hammerschmidt* interpretation was not challenged.

[69] "The language of this statute forbids an illegal agreement to defraud the United States in any manner or for any purpose. It has been legally decided by the courts, and I so instruct you, that the phrase 'defraud the United States in any manner or for any purpose' is not limited merely to conspiracies to deprive the United States of money or property or other things of pecuniary value. It also comprehends the right of the government not to be defrauded of the unbiased, independent, faithful, loyal services of its employees, including Congressmen, and that its legitimate official action shall not be defeated by misrepresentation, chicanery, overreaching trickery, or by means that are dishonest." (App. 89, see also 92).

Johnson earnestly requests this Court to reconsider the expansive interpretation accorded the "defrauding" provision of the conspiracy statute (18 U.S.C. Sec. 371) in *Haas* and in the dictum in the opinion of Chief Justice Taft for the Court in *Hammerschmidt*.

Sec. 371 made it an offense for two or more persons to conspire to commit an offense against the United States or to defraud the United States in any manner or for any purpose. This Section was adopted in 1867, as a result of clamor for the repression of tax violators and it was included in a 34-section statute designed to plug loopholes in the tax laws.[70] The conspiracy provision, then Section 30, was added to the House Bill by the Senate without any explanatory reference appearing in the hearings and reports. Section 30 was enacted at a time and in a setting strongly suggesting that it was primarily aimed at conspiracy to commit offenses against the revenue and to defraud the United States of its revenue.[71] In view of the general language of the defrauding provision, the Supreme Court in *United States* v. *Hirsch*, 100 US 33 (1879) expanded the meaning of the word "defraud" to include fraud "against the coin" or "cheating the government of its land or other property."

In *Hammerschmidt* the Court defined the prohibited object of a conspiracy as cheating the government out of property or money and secondarily as obstructing lawful governmental functions by deceit, craft, trickery, "dishonest means" or "overreaching."[72]

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[70] The history of the provision is traced in Goldstein, *Conspiracy to Defraud the United States*, 68 Yale L.J. 405, (1959); see also *United States* v. *Gradwell*, 243 U.S. 476, 481 (1917).

[71] *United States* v. *Allen*, 24 Fed. Cas. 772 (C.C.E.D.N.Y. 1868); *United States* v. *Thompson*, 29 Fed. 86, 87 (C.C. Ore. 1886).

[72] The language used in the earlier *Haas* case, 216 U.S. 479-80 is also incredible in its expansive reading of the statute: ". . . The statute

A statute which in general terms creates a criminal offense should be interpreted in accordance with the usual and ordinary meaning of the words used. "Fraud" and "defraud" have traditionally and universally involved the cheating of another out of his money or property by misrepresentation, deception, deceit or trickery. When this Court indicated in *Hammerschmidt* that "conspiracy to defraud" also meant conspiracy to obstruct governmental functions by deceit, "dishonest means", "overreaching", the Court made a drastic departure from the customary meaning of the words used by the Congress and thus expanded this penal conspiracy statute far beyond its plain meaning. Indeed the Court's effort to expand the statute to the obstruction of governmental functions is unparalleled distortion of language.

"The obstruction of lawful, governmental functions" has no definable meaning. It affords no standard for the application of the command of the statute. The legislative command of a penal statute must be understandable by those to whom it is addressed,[73] but the language of the command, as in-

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is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of government. . . . [I]t must follow that any conspiracy which is *calculated to* obstruct or *impair its efficiency* and destroy the value of its operations and reports as fair, impartial, and reasonably accurate, would be to defraud the United States. . . ." (Emphasis supplied).

[73] "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally* v. *General Constr. Co.*, 269 U.S. 385, 391 (1926). See also *United States* v. *Harriss*, 347 U.S. 612, 617 (1954); *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453 (1939). *United States* v. *Spector*, 341 U.S. 169, 171 (1952) ". . . [A] statute, plain and unambiguous on its face, may be given an application that violates due process of law. . . ."

terpreted by Chief Justice Taft, is not definite enough to be intelligible. "Dishonest means" and "overreaching" have no more meaning in law than "sinful", "wicked", or "unethical." Such indefinite words are inherently subjective and merely express whatever happen to be current notions of unethical or "bad" conduct. Such vagaries and indefiniteness—not in the penal statute but in the gloss put upon the statute by the judiciary—does not meet contemporary Sixth Amendment standards that an accused be informed of the nature of the accusation against him. If Congress had embodied in the statute the vague expansive definition of conspiracy to defraud the United States contained in *Hammerschmidt*, its unconstitutionality as a violation of the Sixth Amendment and due process would seem apparent.

The *Hammerschmidt* broadside dictum not only expands Section 371 beyond sensible limits but it casts the judiciary in the impossible position of attempting to develop upon a case by case basis an unpublished penal code of ethics by judicial fiat without according any recognition to the legislative responsibility of the Congress. This is a task outside the bounds of judicial interpretation for it is better for the Congress, and in accord with its functions, to revise the statute than for the Court to guess at the revisions it would make. That task Congress can do with precision; the Court can do no more than make speculative law.[74]

It is for the legislative branch to say what acts are to be treated as criminal and the courts have no roving commission to declare agreements criminal or against public policy according to their subjective moral concepts of what is expedient for the welfare of the State. Lord Halsbury in *Janson v. Driefontein Consol. Mines, Ltd.* (1902) A.C.

[74] *United States v. Evans*, 333 U.S. 483, 495 (1948).

484, 490. Yet that is precisely the interpretation which the Government seeks this Court to accord the conspiracy statute.

The unfortunate *dictum* of *Hammerschmidt* violated several of the Supreme Court's most often repeated canons of statutory construction. A criminal statute must be interpreted strictly and any doubt resolved in favor of the accused.[75] Before one can be punished under the federal law, his case must be "plainly and unmistakenly" within the provisions of a statute.[76] The approach of the government seeking a shadow-land area as a trap for the unwary is ". . . the very negation of a fundamental tenet of criminal law in the western world: that no one can be punished for conduct which had not been legislatively defined and classed as a crime in advance of its commission."[77]

> "A criminal statute is to be construed strictly, not loosely. Such are the teachings of our cases from

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[75] The principle has been expressed in numerous decisions of this Court. *United States* v. *Boston & M. R.R.*, 85 S. Ct. 868 (1965); *Yates* v. *United States*, 354 U.S. 298 (1957); *Smith* v. *United States*, 360 U.S. 1, 9 (1959); *Williams* v. *United States*, 341 U.S. 97, 101 (1951); *United States* v. *Alpers*, 338 U.S. 680, 681 (1950).

[76] *United States v. Gradwell*, 243 U. S. 476, 485 (1917); quoting *United States* v. *Lacher*, 134 U.S. 624, 628 (1890).

[77] Goldstein, p. 444. The Conclusions of the International Commission of Jurists on the Rule of Law In A Free Society, New Delhi, India, January 5-10, 1959, included "the definition and interpretation of the law should be as certain as possible, and this is of particular importance in the case of the criminal law, where the citizen's life or liberty may be at stake." "The Rule of Law requires . . . that he [an accused person] should be given notice of the charge with sufficient particularity." "No person of sound mind shall be deprived of his liberty except upon a charge of a specific criminal offense." International Commission of Jurists, *Executive Action and the Rule of Law*. pp. 9, 11, 19. (Geneva). See also pp. 62, 64, 67, 68, 73, 108, 109-111, 114-117.

United States v. Wiltberger, 5 Wheat 76, down to this day. Chief Justice Marshall said in that case: 'The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department.' Id., 95.

The fact that a particular activity may be within the same general classification and policy of those covered does not necessarily bring it within the ambit of the criminal prohibition. *United States v. Weitzel,* 246 U.S. 533."

Under Section 371 a conspiracy to do a lawful act is not illegal. A conspiracy to commit an act reprehensible in the forum of good morals is not an indictable conspiracy. The incredible expansion of the conspiracy to defraud part of Section 371 beyond conspiracy to defraud the government of its property and coin to conspiracy to defraud the government by obstructing governmental functions has made the unlawfulness of conduct depend upon *post hoc* subjective judgments by the judiciary and the triers of fact. Under the guise of enforcing this statute the courts are in reality creating federal offenses which have not been established by Congress.

If the government had charged a conspiracy to violate a statute creating a substantive offense such as Section 281, the conflict of interest statute, or Section 205, the bribery statute, the charge would not only have been clearly authorized by the Congress but would have been intelligible and knowable and the trial would have proceeded subject to recognizable legal principles.

If Johnson had been charged with conspiring to commit the substantive offense of Section 205 he would have been entitled to contend that there was no evidence that he con-

spired to accept a bribe to influence "his vote, act or decision in any question, matter, cause or proceeding which may at any time be pending in either House." (18 U.S.C. 205). If he had been charged with conspiring to violate Section 281, government counsel could not have argued to the jury that he had a "personal interest" in his visits to Justice. (see page 83 herein). Thus the government used the conspiracy to defraud provision of Section 371 to circumvent the limitations of Sections 205 and 281.

The development of conflict of interest penal statutes with respect to the executive officers of the government has been one of the most difficult and perplexing tasks of federal and state legislators.[78] That task as applied to members of the Congress and state legislators, elected representatives of the people, has been even more difficult and perplexing because additional problems are involved which are not incident to conflict of interest as applied to administrative officers and employees.[79] To allow the executive and judiciary free license to resolve this dilemma on an *ad hoc* basis as has been attempted in the case at bar by ignoring in the conspiracy count section 281, the sole legislative pronouncement in the area, is contrary to every known tenet of fairness in criminal law. What could be a sharply focused charge in the best tradition of criminal law, becomes a vague, amorphous accusation, its boundaries unknown and unknowable.

It is beyond belief that in enacting the conspiracy statute in 1867 as a part of a revenue measure Congress could have intended to permit the executive power, abetted by the judiciary, to roam at large in the area of ethics, conflicts of

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[78] See generally, Conflict of Interest and the Federal Service, Chapter III.

[79] *International Assoc. of Machinists v. Street*, 367 U.S. 740 (1961).

interest and loyalty. To permit such meandering is to allow a substitution of judicial for congressional judgments as to these sensitive and delicate areas. To allow a jury to infer a criminal "conspiracy" to defraud the United States by obstructing governmental functions means that a jury must determine far more than that there was a conspiratorial agreement within established legal principles. The jury must decide that the objective of the agreement was to defraud the United States by obstructing governmental functions or their efficiency (*Haas*) or by depriving the government of the faithful services of its officials by dishonest means. *(Hammerschmidt)* This elegant language means that a judge or jury may apply their own notions of ethics, propriety and loyalty in determining a defendant's guilt.

In recent years the Supreme Court has taken cognizance of the menace to individual liberty incident to indictments for conspiracy and has expressed in the most emphatic way its concern as to basic constitutional values threatened by this "darling" of the prosecution. The Court's criticism has been particularly intense with respect to conspiracy charges where prosecution for the substantive offense is possible but the government has included a conspiracy charge to afford it major tactical advantages. *Kotteakos* reversing a conspiracy conviction. In *Krulewitch* (p. 446) reversing a conspiracy conviction, Mr. Justice Jackson said, "The modern crime of conspiracy is so vague that it almost defies definition." "The modern crime of conspiracy is almost entirely the result of the manner in which conspiracy was treated by the Court of the Star Chamber" (p. 450). "Few instruments of injustice can equal that of implied or presumed or constructive crimes. The most odious of all oppressions are those which mask as justice." In *Grunewald v. United States,* 353 U.S. 391, where a conspiracy con-

viction was reversed, the Supreme Court cited Justice Jackson's opinion in *Krulewitch* with approval. See also: *Paoli v. United States,* 352 U.S. 232 (1957) (dissenting opinion of Justices Frankfurter, Black, Brennan and Douglas); *United States v. Falcone,* 109 F.2d 579, 581 (1940) 2d Cir. Judge Learned Hand).[80]

This Court's ill-considered expansion of the conspiracy statute far beyond the limits of logic, reason and its own principles is at war with the contemporary recognition by the Court of the dangers inherent in a conspiracy charge. Criticism by legal scholars of the judiciary's expansion of the defrauding portion of the conspiracy statute has been justifiably virulent.[81] In its anxiety to reach any kind of "unethical" conduct involving officers and employees of the government, this Court in *Haas* and *Hammerschmidt* deprived the defrauding part of Section 371 of any ascertainable meaning. The command of the penal statute became an open ended, floating, indefinable protean prohibition of conduct which might in the future, by the current

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[80] For other criticisms of the law of conspiracy see O'Doughtery, *Prosecution and Defense Under Conspiracy Indictments,* 9 Brooklyn Law Rev. 263 (1940); Sayre, *Criminal Conspiracy,* 35 Harv. L. Rev. 393, 425 (1922); Goldstein, *Conspiracy to Defraud the United States,* 68 Yale Law Journal, 404 (January 1959); *The Conspiracy Dilemma: Prosecution of Group Crime or Protection of Individual Defendants,* 62 Harv. L. Rev. 276, 283-84 (1948); Note, *Criminal Conspiracy: Bearing of Overt Acts upon the Nature of the Crime,* 37 Harv. L. Rev. 1121, 1123 (1924); Klein, *Conspiracy—The Prosecutor's Darling,* 24 Brooklyn L. Rev. 1, 405 (1957); Note, *The Conspiracy Dilemma,* 62 Harv. L. Rev. 276, 278-79 (1948); Note, *Guilt by Association,* 17 U. Chi. L. Rev. 148, 153 (1949); Report of the Conference of Senior Circuit Judges in 1925, Chief Justice Taft presiding; Darrow, *The Story of My Life,* 64, 144-145; Kenny, *Outlines of Criminal Law,* Sec. 454; O'Brien, *Loyalty Tests and Guilt by Association,* 61 Harv. L. Rev. 592, 599-600 (1948).

[81] See note 80.

standard of ethics or loyalty, be deemed undesirable. Such a concept of crime is not only at variance with basic principles of ordered liberty but is an uncomplimentary reflection upon the competence of the Congress to declare and define by legislative act what is a criminal offense.

The sensible limitation of the "defrauding" provision of Sec. 371 sought by Johnson, would not hamper the prosecutor's law enforcement activities. Analysis of the cases applying the *Haas* and *Hammerschmidt* rationale indicates that virtually all of them involved acts punishable an an "offense" against the United States.[82] Almost all were subject to prosecution under the part of the statute which proscribes conspiracy to commit "any offense against the United States."

Under the interpretation of Section 371 in *Haas* and *Hammerschmidt* the federal police have been vested with license to interfere with the freedom of action of practically every individual.

> "[T]his is no longer a time when anti-social conduct so outstrips the available crimes that a catch-all crime is essential in order to deter persons particularly at the federal level from approaching the outer limits of criminality. Indeed today's detailed federal criminal code reaches so broad a range of anti-social conduct, and in such overlapping fashion that multiplicity of catagories, not sparseness of catagories, is the essential problem. Further Congress sits in almost continuous session ready to act on recommendations for criminal legislation from the multitude of federal agencies dealing with all approaches of our national life. The rapidity with which curative legislation can be enacted makes it unlikely that many persons will long escape

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[82] Goldstein, *Conspiracy*, p. 436-411.

prosecution for conduct deemed objective to societal norms".[83]

Thus it would seem that continued reliance on *Hammerschmidt* is a prosecutor's apron string which can be painlessly severed. It should be put to rest with dispatch.

B

If this Court concludes that it is constrained to follow *Hammerschmidt* and *Haas*, it is submitted that the accusations as to the speech made in the pending case are not within their scope. The essential components of even the subsidiary meaning of conspiracy to *defraud* under those cases are (1) obstruction or interference with a lawful governmental function *and* (2) fraud, deceit, craft, etc. Mr. Johnson's alleged collaboration with others in the preparation of his speech, his delivery of the speech for an alleged gift and his ordering of copies from the Government printing office for publication cannot be deemed an obstruction or interference with any lawful governmental function. It is apparent that this Court in *Haas* and *Hammerschmidt* had in mind obstructions, or interference, with the conduct of the executive or judicial departments of the government, but, if the *dictum* were expanded to encompass obstructions of the conduct of the legislative branch, by no process of reasoning may the accusations as to the Johnson speech be deemed an obstruction, or interference with, the functions of the House of Representatives or any business of the House. This speech, unrelated to pending legislation, did not even remotely affect the functioning of the House. Fraud, deceit,

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[83] Goldstein, *Conspiracy*, p. 462. Virtually all of the major regulatory statutes contain at least one provision making it a crime to violate other provisions of the statute.

and craft involve false statements or misrepresentation and no false statement or misrepresentation was alleged or proven.

As to the claim of the Government at the trial that the acceptance of a political compaign gift in connection with a speech is "dishonest" and so within *Hammerschmidt*, we wish to point out that another part of that opinion disclaims that all dishonest acts are includable in the statute (p. 188). The opinion does suggest that bribery of an "official" is within the statute but an elected member of Congress cannot be deemed to be a government official because the relationship of the government to a legislator is not that of employer and employee.[84] A member of Congress has no duties outside of Congress and he has no duties within his chamber except those which arise out of his right to vote and to speak. *Montefiore v. Menday Motor Components Co.* (1918) 2 K.B. 241.

We submit that, under the most liberal interpretation of the *Hammerschmidt Obiter*, alleged "unethical" or "dishonest" or "overreaching" speech in the Congress is not within its ambit and for this Court to hold that the accusations by the Government with respect to Mr. Johnson's speech in the House contained in Count One of the indictment, and the evidence under Count One, are within the scope of the conspiracy statute, it must further expand the criticized and ill-conceived words of *Hammerschmidt* beyond rational limits.

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[84] Manning, *Federal Conflict of Interest Law*, 78-79 (Harvard, 1964) and Yankwich, *The Immunity of Congressional Speech*, 99 U. of Pa. Rev. 960, 975.

VII

THE FOURTH CIRCUIT CORRECTLY HELD THAT THE EFFECT OF THE UNLAWFUL CONSPIRACY CHARGE WAS SO PREJUDICIAL AS TO REQUIRE REVERSAL UNDER THE SUBSTANTIVE COUNTS.

The Fourth Circuit concluded:

> "... the invalidity of count one as applied to Johnson was obviously prejudicial to his right to the unbiased consideration of the jury on the remaining counts. Many of the events testified to at the trial related only to the speech. It was introduced into evidence and its authorship, contents, motivations and accuracy made the subject of extensive inquiry. The conclusion is unavoidable that this mass of evidence and comment, all inadmissible against Johnson, infected the jury's consideration of his innocence or guilt under the conflicts of interest counts. The judgment against Johnson is therefore vacated and the case remanded for a new trial on the counts charging violations of 18 U.S.C.A., Sec. 281. . . ." (337 F.2d at 204)

Although the government reserved this question in its Petition for Certiorari (Pet. p. 11), the government has not questioned in its Brief in this Court the correctness of this conclusion of the Fourth Circuit.[85] Nor did the government contest our position as to this in its brief in the Fourth Circuit.

The trial of this case involved in large part the accusations contained in the conspiracy charge and we estimate that not less than 70% of the testimony related to its charges. Its broad scope enabled the government to put in evidence a vast amount of testimony which would not

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[85] The Government has only argued that the evidence under the conspiracy charge as to the speech did not violate the Speech and Debate clause. (Gov't Brief pp. 16, 17).

have been admissible under the substantive counts. The extensive testimony relating to events in the year 1960 would seem to bear no relationship to the charges of the substantive counts that Johnson accepted specific checks as compensation for his visits to the Department of Justice after February 1961. This 1960 material included Johnson's speech of June 30, 1960, discussions about the speech, its preparation, motivation and content, the $500.00 campaign contribution of June 20, 1960, the orders for the reprints of the Speech, its distribution, a retainer of $1,000.00 paid Johnson by Robinson on August 30, 1960, for future legal services for the savings and loan associations, a political campaign contribution of $300.00 on 1960, and Johnson's legal services for the savings and loan associations in the fall of 1960 and the winter of 1960-61.

The testimony of numerous witnesses related to Johnson's speech of June 30, 1960, and a mass of evidence came in under the conspiracy charge with respect to Boykin's substantial land transactions in southern Maryland and Virginia. See note 59 page 67 herein. The extensive jury arguments of government counsel related principally to the evidence which they claimed supported conviction under the conspiracy charge (Tr. 6218-6221, 6225-6228).

As the Court of Appeals held, the substantive counts cannot be divorced from the all-persuasive conspiracy charge and the evidence submitted under it. That unlawful charge was so prejudicial and deadly that this Court may not conclude that it did not influence the jury as to the substantive counts. *Kotteakos v. United States,* 328 U.S. 750, 764, 765. "Proof that the Plaintiff in error was guilty of another crime was in itself prejudicial." *Terry v. United States,* 7 F.2d 28 (9th Cir. 1925); *Tipton v. Socony Mobil Oil Co.,* 375 U.S. 34 (1963); *Hawkins v. United States,* 358 U.S. 74, 79 (1958).

The standard in *Kotteakos* (page 765) to be applied in deciding whether substantial error requires reversal is that ". . . if one cannot say, *with fair assurance*, after pondering all that happened without stripping the erroneous action from the whole that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected."[85a]

The Fourth Circuit has unanimously held that the invalid conspiracy charge and the evidence submitted under it "was obviously prejudicial to his [Johnson's] right to the unbiased consideration of the jury on the remaining counts." The government did not claim otherwise in the Fourth Circuit and has not done so here. No one could say with "fair assurance" that the judgment under the substantive counts was *not* infected by the unlawful conspiracy charge and the evidence submitted under it.

PART TWO

IMPORTANT ISSUES ERRONEOUSLY RESOLVED BY THE FOURTH CIRCUIT IN FAVOR OF THE GOVERNMENT

Affirmance by this Court of the decision of the Court of Appeals as to the invalidity of the conspiracy charge will mean that Johnson may be retried by the Government under the substantive counts. It would seem imperative therefore for this Court to consider and review certain adverse and erroneous decisions by the Court of Appeals

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[85a] The Court in *Kotteakos* pointed out that the standard to be applied when a constitutional right has been denied might be even more liberal: "If, when all is said and done, the conviction is *sure* that the error did *not* influence the jury, or had but very slight effect, the verdict and the judgment should stand, except perhaps where the departure is from a constitutional norm or a specific command of Congress." at page 764-65, citing *Bruno v. United States,* 308 U.S. 287 (1939), and *Ballard v. United States,* 329 U.S. 187, 195 (1946).

for the guidance of the District Court.[86] Otherwise upon a new trial they will be binding upon the District Court. Accordingly counsel for Johnson deem it necessary to submit these issues here in order that upon a retrial Johnson may be accorded the rudiments of a fair trial.

I

THE DISTRICT COURT WAS IN ERROR IN REFUSING JOHNSON ACCESS TO THE TRANSCRIPT OF ALL TESTIMONY BEFORE THE GRAND JURY WHICH INDICTED HIM WHEN THE GOVERNMENT HAD BREACHED THE "SEAL OF SECRECY" IN VIOLATION OF CRIMINAL RULE 6(e).

At the opening of Court on the first day of trial, counsel for a co-defendant advised the Court that an entire volume of grand jury testimony containing the testimony of various witnesses had been made available to a prospective witness and his attorney by the United States Attorney in violation of Rule 6(e) of the Federal Rules of Criminal Procedure[87] which requires court action for

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[86] If this Court sustains the conspiracy charge, Johnson would also seem to be entitled to have this Court review these questions.

[87] Rule 6(e): Secrecy of Proceedings and Disclosure. Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties. Otherwise a juror, attorney, interpreter or stenographer may disclose matters occurring before the grand jury only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

such a breach of the secrecy of grand jury proceedings (Tr. 4, 6). Counsel for the co-defendant moved that the Court release all grand jury testimony to the defendants and allow reasonable time for defense counsel to study the grand jury testimony prior to the beginning of the trial (Tr. 6). This motion was adopted on behalf of Johnson (Tr. 17).

The United States Attorney admitted of record to the Court that the volume of grand jury testimony containing the testimony of Mr. Finneran, Mr. Shoultise and others had been given to Mr. Finneran and his attorney (Tr. 8-10). At the very least permission was granted to examine the testimony of Mr. Finneran and Mr. Shoultise. Had permission to examine the other testimony in the volume been requested, such permission would have been granted (Tr. 10). The Government did not challenge the representation to the Court by counsel for Johnson's co-defendant that Mr. Finneran and his counsel had read the testimony of Mr. Dixon, Mr. Shoultise, Mr. Wechsler and Mr. Finneran (Tr. 4-5). They had the opportunity to do so because they had been left alone in a room with the volume of the grand jury transcript (Tr. 21).

The defendants' motion was denied. On the "tit for tat" theory the District Court merely made available to defense counsel the one volume of grand jury testimony, the secrecy of which was breached by the government (Tr. 61-66). The Fourth Circuit found no error in this ruling (337 F.2d 196-98).

A

The Grand Jury Transcript Should Be Available to the Accused After His Indictment

The "seal of secrecy" of Grand Jury proceedings in the United States is an anomaly in the administration

of criminal justice in western civilization. Under the civil law of Western Europe and Latin America, the function of a Grand Jury is performed by a *Judge d'instruction* and, if this investigating judge finds probable cause and authorizes a criminal prosecution, defense counsel are entitled to access to his entire file including all statements of witnesses. In England where the Grand Jury has been abolished, its function is performed by a judge at a preliminary hearing and the accused has full access to all testimony adduced at that hearing.

This Court's refusal in *Pittsburgh Plate Glass v. United States,* 360 U.S. 395 (1959), a 5-4 decision, to give Section 6(e) sufficient scope to be of real value in discovery has been widely condemned for its uncritical exaltation of secrecy for secrecy's sake.[88] The fact that the expressed classic values of grand jury secrecy do not withstand analysis when applied after indictment is especially disturbing when it is recalled that lack of opportunity to adequately prepare a defense may result in a conviction in a case, where, had all of the facts been known to the defendant, the conviction would not have been obtained. With commendable candor,

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[88] Mr. Justice Brennan, said for himself, the Chief Justice, Mr. Justice Black and Mr. Justice Douglas, "The court's insistance on secrecy exalts the principle of secrecy for secrecy's sake . . ." 360 U.S. at 407.

Goldstein, *The State and the Accused: Balance of Advantage and Criminal Proceedings;* 69 Yale L.J. 1149 (1960); Sherry, *Grand Jury Minutes: The Unreasonable Rule of Secrecy,* 48 Va. L. Rev. 668, 647 (1962); and Calkins, *Grand Jury Secrecy,* 63 Mich. L. Rev. 445 (1965) all contend that a wider scope to criminal discovery including discovery of grand jury minutes is called for. Two state cases taking a liberal view of discovery of grand jury minutes are *Utah v. Faux,* 9 Utah 2d 350, 345 P.2d 186 (1959) and *State v. James* (Mo.) 327 S.W. 2d 278 (1959). Also contending for a wider scope to discovery of grand jury minutes is the report of the grand jury committee of the Criminal Law Section of the American Bar Association, August 10, 1963.

four out of 14 United States Attorneys surveyed admitted that there were cases the defense would have won had more discovery been allowed the defendant.[89] The American Bar Association Special Committee on Federal Rules of Procedure has recommended to the Judicial Conference of the United States that *disclosure be required* of grand jury minutes after indictment.[89a] All of these factors suggest that there is something amiss in the present administration of federal criminal justice.

The reasons given in *Proctor & Gamble* for secrecy were as follows:

> "(1) To prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors: (3) to prevent subornation of perjury or tampering with the witness who may testify before grand jury and later appear at the trial of those indicted by it: (4) to encourage free and untrammeled disclosures by persons who have information with respect to the commission of crimes; (5) to protect innocent accused who is exonerated from disclosure of the fact that he has been under investigation and from the expense of standing trial where there was no probability of guilt".[90]

Once the grand jury indictment has been brought and the accused arrested these five reasons lose all merit.

When an indictment has been brought and the accused has been arrested the inapplicability of the first reason,

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[89] Survey taken by the Junior Bar Section of the District of Columbia for the Judicial Conference of the District of Columbia, Circuit, May, 1963, reported 33 F.R.D. 47, 101 at 118. Twelve of seventeen defense lawyers surveyed stated there were cases the defense would have won with more discovery.

[89a] Transmitted to the Judicial Conference by resolution of the American Bar Association by letter of August 18, 1965.

[90] 356 U.S. at 681.

fear of the escape of the accused, is apparent. The second reason, non-interference with the delicate deliberations of the grand jury, also becomes irrelevant when the indictment has been delivered. It is not the deliberations of the grand jury nor the record of the votes of the grand jurors which is sought. That is a *secula seculorum* which remains inviolate. It is only testimony given before the grand jury that is sought.

The danger that witnesses will be tampered with—the fear of subornation of perjury by the defendant—, the third reason proffered by the Court, likewise can have no place after the indictment has been brought. The danger that witnesses will be tampered with before they testify at trial should be lessened rather than heightened when the defendant has knowledge of the fact that the witness has already gone on record as to the facts of the case. The fear of perjury as a result of additional discovery has been emphatically repudiated by the contrary experience of discovery in the civil field.[91] In addition this

[91] Mr. Justice Brennan, speech in a symposium at the Judicial Conference of the District of Columbia Circuit, 33 F.R.D. 47, 56 at 62 (May, 1963): "I must say, in any event, I could not be persuaded then and I cannot now, that the old hobgoblin perjury, invariably raised with every suggested change in procedure to make easier the discovery of the truth, supports the case against criminal discovery. I should think, rather, that is complete fallacy has been starkly exposed through the extensive and analogous experience in civil causes where liberal discovery has been allowed and, so far as I know, no one suggests that perjury has been fostered. Indeed, the experience has suggested that liberal discovery, far from abetting, actually deters perjury and fabrication. Surely that experience is solid evidence of the beneficial results of discovery to the cause of justice without the defeat of justice through perjury foretold by the prophets of doom. In any event, as has been said, 'The true safeguard against perjury is not to refuse to permit any inquiry at all, for that will eliminate the true as well as the false, but the inquiry should be so conducted as to separate and distinguish the one from the other where both are present.'"

reason makes the insulting supposition that members of the bar who represent the state may be trusted, but members of the bar who represent defendants will suborn perjury or tamper with witnesses.[92] This inference assumes that the defendant is in fact guilty until he proves himself innocent, thus contradicting the most basic notion of criminal justice in the United States.[93] Any reason predicated upon such an assumption is abhorent to the cause of liberty and justice.

The fourth reason, encouragement of disclosure before the grand jury is, of course, irrelevant at the trial stage of the proceedings if it is ever valid at all. Witnesses may be subpoenaed at both the grand jury and trial stage of the case. It is vital to the cause of justice that the facts be brought out at trial. If information beneficial to the cause of the defense is not brought to the attention of the accused and his counsel, then a grave injustice has been done.[94]

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[92] Brennan, *ibid,* at 63.

[93] Goldstein, *Balance of Advantage,* at 1193.

[94] The fact that problems will arise in particular cases where it will be required that portions of the grand jury transcript be kept secret is no reason to doubt the general validity of the argument. As Professor Goldstein suggests, the "concept of the protective order" of section 30 (b) of the Federal Rules of Civil Procedure may well be applied to criminal discovery. *Balance of Advantage.* Mr. Justice Brennan's comments on this problem are as follows:

"The extent to which discovery should be allowed in particular cases will, of course, present complex problems. There will be questions for the exercise of sound discretion depending upon the particular materials of which discovery is sought. The showing of need of a given accused may require discovery, I think, despite strong governmental interests advanced by the prosecution against allowing it. In other words, there will be much need for the striking of a proper balance in individual cases. Surely arguments of the prosecution that, for example, witnesses might be imperiled are not wholly illusory. And to the extent discovery of the accused may be sought by the prosecution,

The fifth reason stated by the Supreme Court, protection to one who is exonerated by the grand jury, is entirely inapposite where an indictment has in fact been brought.

The most convincing evidence that the reasons for grand jury secrecy are spurious is the experience of those jurisdictions, including California, Iowa, Kentucky, and Minnesota, which require full disclosure of the transcript of grand jury testimony.[95] "[p]erhaps most jurisdictions are reluctant at this time to liberalize their rules of discovery

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there will necessarily lurk below the surface constitutional questions arising from the privilege against self-incrimination. In short, there are problems that argue not only for judicial discretion but perhaps, for even a greater measure of discretion than has been found necessary in the area of civil discovery.

"I do not deny the force of the objections which have been raised against expanded criminal discovery. All I have attempted to suggest this morning is that these objections, if not wholly invalid, are simply not insurmountable. In any event, I have great difficulty accepting them as reasons for refusing to allow criminal discovery under appropriate judicial safeguards. Where dangers do exist and abuses are threatened, not denial of discovery but appropriate safeguards to prevent such dangers and abuses should, I think, be our effort. We found out that the civil discovery procedures could be abused, and we fashioned safeguards against those abuses. The court-made rules protecting the attorney's work product and enforcing privileges against disclosures of confidential or secret information are examples. If there is merit in the insistence that the public interest in law enforcement requires even stronger safeguards against unwarranted disclosure of the prosecution's case, surely appropriate sanctions can be devised. In the rare case, the denial of all discovery may be compelled to protect the safety of witnesses or prevent an apparent perversion of the judicial process. But I would leave the primary responsibility with the trial judge under such guidance from appellate courts as may be necessary to mark its proper limits. I do submit that the gain to the public interest in the pure and just administration of the criminal law is well worth the risks."

[95] See Cal. Pen. Code Sec. 938.1; Iowa Code Sec. 772.4 (1962); Ky. Crim. Code Sec. 110 (Baldwin, 1953); Minn. State Ann. Sec. 628.04 (1947).

to the extent of permitting pretrial inspection of grand jury minutes, but the experience of those that have demonstrates that no vitality is drained from the effort or success of the state in its prosecution of criminals.''[96]

The benefits of discovery in ". . . notice-giving, issue-formulation and fact-revelation . . .''[97] are at least equally applicable in the criminal field as in the civil.[98]

"If a procedural system is to be fair and just, it must give each of the participants to the dispute the opportunity to sustain his position. It must not create conditions which add to any essential inequality of position between the parties, but rather must assume that inequality be minimized as much as human ingenuity can do so. * * * If the trial is to be the occasion at which well prepared adversaries test each other's evidence and legal contentions in the best tradition of the adversary system, there can be no substitute for a deposition, discovery, and pretrial procedure.''[99]

The rationale of the secrecy requirement is negated by the philosophy of *Jencks v. United States,* 353 U.S. 657 (1957). Although this Court has held that the *Jencks* rule

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[96] Calkins, at 469.

[97] *Hickman v. Taylor,* 329 U.S. 495, 500 (1947).

[98] See the authorities cited in note 112. Even in *United States v. Proctor & Gamble,* 356 U.S. 677, 682-683 (1958), where the Court denied discovery of grand jury minutes to the defendant in a civil case this Court paused to point out that "Modern instruments of discovery serve a useful purpose, as we noted in *Hickman v. Taylor* . . . They together with pretrial procedures make a trial less a game of blind man's buff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent. Only strong public policies weigh against disclosure."

[99] Goldstein, *Balance of Advantage* at 1192-93.

does not apply to grand jury minutes,[100] it surely is apposite as a rule of fairness.[101]

Formally recorded testimony before a grand jury ". . . an appendage of the court . . ."[102] would seem to have a greater claim to disclosure than informally recorded statements of a government witness as to what was said long in the past.[103] Also in point is the decision in *Brady v. Maryland*, 373 U.S. 83 (1963) holding that the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material to guilt or to punishment.

The guiding principle in *Brady* and *Jencks* is that of fairness to the accused. In *Jencks*, this Court (quoting from another leading decision), said:

> ". . . the Government can invoke its evidentiary privilege only at the price of letting the defendant go free. The rationale of the criminal cases is that, since the Government which prosecutes the accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecution and then invoke its governmental privilege to deprive the accused of anything which might be material to his defense."[104]

It is respectfully submitted that the goal of fairness to the accused—of equal opportunity to the accused and the prosecution as articulated in *Jencks* and *Brady*—impel

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[100] *Pittsburgh Plate Glass v. United States*, 360 U.S. 395, 398 (1959).

[101] Calkins at 481; Sherry at 671; Goldstein, *Balance of Advantage* at 1184 fn. 116.

[102] *Brown v. United States*, 359 U.S. 41, 49 (1959). The proceedings before a grand jury constitute a ". . . judicial inquiry . . ." *Cobbledick v. United States*, 309 U.S. 323 (1940), 1327 quoting *Hale v. Henkel*, 201 U.S. 43, 66 (1906).

[103] See *infra*.

[104] *U.S. v. Reynolds*, 345 U.S. 1 at 12 (1953) as quoted in *Jencks v. United States*, 353 U.S. at 671.

the conclusion that the unnecessary veil of secrecy surrounding the grand jury transcript in the case at bar should fall.

B

On the Facts of This Case Johnson Was Entitled to Access to the Grand Jury Testimony

When the government has breached the secrecy of the grand jury as government counsel did in this case, an unfair advantage would result if a defendant were not entitled to the entire grand jury transcript. The advantage to the prosecutor of the opportunity to pick and choose as to which parts of the grand jury transcript will be opened up contrary to the direction of Section 6 (e) could well be a vital factor in shifting the balance of advantage in a criminal prosecution even further against the accused.[105]

The facts of this case illustrate methods by which advantage may be gained by the prosecution.[106] A witness is shown testimony of others given *before the grand jury.* These words are emphasized because the fact that the testimony shown the prospective witness is Grand Jury testimony is, in itself, significant to the witness. Why? Because the government hopes to use the testimony of that witness and to reinforce his confidence and thus make him a more credible witness in the eyes of the trial jury or because the government hopes that, when he and his counsel read the testimony of others, they will not wish to contradict them. Or a witness is shown his own testimony before the grand jury as to which his memory has

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[105] *Cf.* Goldstein, *Balance of Advantage* at 1152.

[106] The advantages gained by the prosecutor's pre-trial breach of secrecy do not apply when the government is permitted to impeach a witness at trial by his grand jury testimony.

become hazy in the hope that his memory will be jogged along certain preferred lines.[107]

If the accused has the same advantage of making use of the grand jury transcript, he would have the opportunity to take similar action as to the testimony before the grand jury which may be favorable to him. Thus the balance of advantage which seems to have been shifted so heavily against the accused by the prosecutor in violation of the requirement of Sec. 6 (e) would be righted. In other words a sound rule should mean that the defendant gets to look not only at the discards but rather that he is given an opportunity to play the same game himself.

The tit-for-tat notion applied by the District Court and approved by the Fourth Circuit is unsound in theory and practice. If a government witness or his counsel or both read a volume, a page or a paragraph of the transcript, under this vagary, defense counsel may do so. This rule puts the government in the anomolous position of being able to treat recorded grand jury testimony of witnesses as its private property when in fact it is the property of the court, to violate Rule 6 (e) and the vaunted "seal of secrecy" in its discretion at will with the knowledge that there is only a limited disclosure consequence. It enables the prosecution deliberately to disregard Rule 6 (e) without an adequate sanction.

It is therefore submitted that in this case the defense met the burden of *Pittsburgh Plate Glass v. United States,* 360 U.S. 395, 400 (1959) "to show that 'a particularized need' exists for the minutes which outweighs the policy

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[107] Quoting from the transcript at page 9: "MR. TYDINGS: . . . Mr. Finneran arrived with his counsel. He had difficulty recalling the facts and events which he was being questioned about by Mr. Weiner."

of secrecy.''[108] The need is to right the imbalance caused by the prosecutor's flagrant disregard of the command of Rule 6 (e). As this Court stated in *United States v. Socony-Vacuum,* 310 U.S. 150, 234 (1940) ''after the grand jury's functions are ended, disclosure is wholly proper where the ends of justice require it.'' The defense should have been granted access to the entire grand jury transcript of testimony subject to a protective order as to any portions which the government could demonstrate required suppression.

II

THE FOURTH CIRCUIT WAS WRONG IN HOLDING THAT THE INTERVIEW NOTES OF THE FBI AGENTS WERE NOT PRODUCIBLE UNDER THE JENCKS ACT

Manuel Buarque, Johnson's administrative assistants testified as a defense witness that he alone prepared the speech for Congressman Johnson and he was merely furnished some facts and figures for it by Hefflin. (App. 476-482). His testimony was vital to Johnson's defense because it negated the contention of the government that the speech had been prepared by Robinson.

In order to discredit Buarque's testimony the government called as a witness FBI agent Milne, who testified that at an interview on January 11, 1962, Buarque told him that he had not met Robinson until the spring of 1961 (9 months after the speech). Since Buarque had testified that he met Edlin and Robinson in the spring of 1960 (Tr. 5471) and there was no dispute as to this, Buarque's statement to the FBI, if so made, was false.

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[108] Also *United States v. Proctor & Gamble,* 356 U.S. 677, 683 (1958).

On cross-examination the FBI agent stated that during the interview he made written notes from which he later prepared an interview report. "I dictated it [his interview report] from notes that were made during the course of that interview." (Tr. 5474). Buarque did not sign the notes or the later interview report (Tr. 5473) and in fact was not shown them. The agent testified that he deliberately destroyed the original notes in accordance with FBI policy (Tr. 5474-5475). Government counsel stated on the record that the notes were destroyed pursuant to instructions contained in the FBI Manual (Tr. 5503) apparently issued after the Jencks decision (Tr. 5504-5505).

Johnson moved that the agent's testimony be stricken on the ground that the notes constituted "producible" Jencks Act (18 USC Sec. 3500) material and the failure of the government to retain and produce them violated Johnson's rights. Since the interview report of the FBI was made available to the defense, the District Court denied the motion.[109]

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[109] To rebut the testimony of Robinson and Johnson that the checks specified in the indictment were payments to Johnson for legitimate legal services, the Government called as a witness FBI agent Strickland who had interviewed co-defendant Robinson. The agent testified that Robinson made no mention to him of the $1,000 retainer fee of August 1, 1960, paid to Johnson (Tr. 5479) and Robinson stated that the total fees paid to Johnson were between $6,000 and $7,500 (Tr. 5481). This estimate of legal fees was considerably less than the sums admittedly paid to Johnson. The agent made notes of this interview at the time and from these notes prepared a narrative statement (Tr. 5479). Robinson read, corrected and signed this statement and a copy was given to him (Tr. 5479-80).

On cross-examination the agent stated that, after he prepared Robinson's statement, he deliberately destroyed the interview notes in accordance with FBI policy (Tr. 5484-5485). At the time he did so he knew that Robinson might be called as a witness in a prosecution against Johnson and that he himself might be called to testify (Tr. 5483-84). Johnson joined in a motion to strike the agent's testimony

The Fourth Circuit recognized that, if the notes qualified as a "statement" a "serious question arises" (p. 201). That Court critized the FBI policy with respect to the intentional destruction of interview notes. "If the notes were available, they might confirm or refute one version or another" and "one of the purposes of both the *Jencks* decision and the Jencks Act is to afford the defense an opportunity to impeach witnesses" (P. 202). The Fourth Circuit then erroneously held that the notes of the FBI agents did not qualify as a "statement" or as a "report" under the Jencks Act. In thus emasculating the Jencks Act the Fourth Circuit ruled that "by its terms the Act does not cover statements made either by a defendant or by a defense witness" and only the interview reports of the FBI agents were obtainable under the Act. The Fourth Circuit held that the FBI agents' interview reports were within the Jencks Act because in each instance the "report . . . was made by a government witness [the agent] . . . to an agent of the government" [his superior agent] but their original notes "were at most statements of Robinson and Buarque, not statements 'made by a government witness.'" (p. 202).

If accepted by this Court, this highly restrictive interpretation of the Jencks Act means that the original notes of a government agent are producible when the government agent interviews one who later becomes a government witness but are not producible when the agent interviews one who becomes a defense witness or a defendant. Such an attenuated distinction has not been drawn by this Court or by any other Court in the federal system.

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on the ground that the original interview notes were producible statements (Tr. 5499-5500). The Court denied the motion. Since Robinson, as general counsel for the savings and loan assocations, was the best informed witness as to Johnson's legal services, any testimony impeaching Robinson necessarily discredited Johnson's defense.

(a) This far reaching interpretation of the Jencks Act by the Fourth Circuit is erroneous.

First: The unambiguous language of the Act indicates that the original interview notes should be deemed a statement of a "prospective government witness," the phrase used in Section 3500(a), to an agent of the government. The intent is apparently to include the statement of any person interviewed in the course of a criminal investigation.

Second: At the time the government agent interviews a person in the course of a criminal investigation, ordinarily there is no means of knowing whether that person will be a government witness, a defense witness or a defendant. The determination is later made by the government. Whether he will be called as a government witness at the trial depends upon whether government counsel considers his statements allegedly made to the investigating agent helpful to the prosecution. Thus under the decision of the Fourth Circuit the production of the original notes of the FBI agent under the Jencks Act is determined by the later decision of the prosecution to call as a witness the person interviewed. If so called, he may be impeached by the original notes of the agent. If he is called as a defense witness or if he is made a defendant and a government agent testifies to his alleged contradictory statements to discredit his testimony, the agent's testimony cannot be impeached by his original notes but only by his interview report submitted to his superiors. Surely there is no logic or fairness in such an attenuated distinction. Happenstance should not be the determining factor in the application of the Act.

Third: When a government agent testifies to oral statements made to him by a defense witness contradicting the

testimony of that witness, there is as much necessity for the defense to be able to impeach the government agent by showing a variance or an omission in his notes as in the case of a non-government prosecution witness. FBI agents, treasury agents, i.e. "Law Men" are so romanticized that, enveloped in an aura of efficiency, heroism and objective impartiality, they speak in court with a convincing authority denied the ordinary witness. The honesty of an investigating agent may be unquestioned, but his interest in a successful outcome of a case investigated by him cannot be discounted. Hence the only possible impeaching tool on cross-examination, Jencks Act material, is more, not less, essential in this case than in the situation of the ordinary nongovernment witness for the prosecution.

Fourth: When a government agent records written contemporaneous notes of what a person interviewed allegedly tells him and the agent later testifies for the government to such statements, his notes are not merely a "statement" of the defendant or defense witness interviewed, as the Fourth Circuit held; they should be deemed a "statement" of the government agent under Section 3500(b). So, too, his original notes should be deemed a "statement" within the definition of Section 3500 (e) (1), namely, "a written statement made by said witness and signed or otherwise adopted or approved by him." Although not signed by the witness, the original notes should be deemed "otherwise adopted or approved by him" when the government agent vouches for their accuracy. The notes are the best evidence *of the agent's understanding* of the statements made to him by the witness. Over a period of a year an investigating agent must interview countless persons and he could not possibly be expected to recall what each one said except upon the basis of the written record. If a government agent testified from his original notes or from an interview report

prepared from the notes in a case involving the personal liberty of one accused of crime, the original notes i. e. the "statement", should be deemed adopted or approved by the government agent. Indeed there could not be in fact an approval or adoption more significant.

Fifth: The principle that original notes of a government agent are Jencks Act material available to impeach that agent when he testifies at trial would seem to be well settled by authority. In *Clancy v. United States,* 365 U.S. 312, 313-14 (1961) this Court expressly held that original notes made by government agents requested for just such a purpose may be Jencks Act material. This Court's opinion by Mr. Justice Douglas holds that each memorandum by treasury agents of statements made to them by the defendants was a "statement" as that word is defined in the Act and he suggests that otherwise the Jencks Act might be unconstitutional as a restriction upon due process. The Fourth Circuit ignored this authoritative and controlling determination. The distinction made by the Fourth Circuit also seems at variance with its own decision in *Holmes v. United States,* 271 F.2d 635 (1959), where that Court explicitly rejected the contention of the government that the Jencks Act did not apply to statements prepared by a government agent who became a witness at the trial.[110]

Concessions by the Solicitor General in three recent cases, *Killian v. United States* 368 U.S. 231, 239 (1961), *Evola v. United States* 375 U.S. 32 (1963) and *Clancy v. United States* 365 U.S. 312, 313-14 (1961), that notes by govern-

[110] In accord: *United States v. O'Connor,* 273 F.2d 358 (2d Cir. 1959); *United States v. Prince,* 264 F.2d 850 (3rd Cir. 1959); *Lewis v. United States,* 340 F.2d 678, 682 (8th Cir. 1965); *United States v. Berry,* 277 F.2d 826 (7th Cir. 1960); *Burke v. United States,* 279 F.2d 824, 826 (8th Cir. 1960); *United States v. Delucia,* 262 F.2d 610 (7th Cir. 1959).

ment agents may be Jencks Act material support our position as do the opinions of this Court in both *Campbell* cases.[111] The legislative history of subsection (e) indicates that Congress intended that it "would include a memorandum made by an agent of the government of an oral statement to him by a government witness . . .". *Palermo v. United States*, 360 U.S. 343, 359 (1959). Surely interview notes made contemporaneously by a government agent in the presence of the witness should also be deemed such a memorandum. If a more formal interview report later prepared by the agent from his notes is the equivalent of "a memorandum", the informal original notes certainly qualify as such "a memorandum."

Original written notes contemporaneously made by an FBI agent, in the course of an interview, of statements made to him by a witness, whether read back or not read back to the witness, have a greater claim to production at a criminal trial for impeachment purposes than a later interview report prepared by the agent from his original notes. The notes constitute primary evidence of the agent's understanding of the witness prepared in the course of the interview in the presence of the person interviewed; the interview report represents secondary evidence prepared later from his notes by the agent out of the presence of the witness.

Under these conditions it would be incongruous for the Court to hold that an interview report is discoverable under (e) (1) or (e) (2) of the Jencks Act but the original notes are not. Not only would there be no logic or reason for

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[111] In *Campbell II* the Supreme Court, in the opinion of Mr. Justice Brennan, held that the District Judge was not clearly erroneous in finding the notes to be producible under Section 3500 (e) (1) and the interview report to be a producible copy of the notes.

such a distinction but it would do violence to the purposes of the Jencks Act in reaffirming the holding of the Supreme Court in *Jencks* that a defendant on trial in a federal criminal prosecution is entitled for impeachment purposes to relevant and competent statements of a government witness touching the events or activities to which the witness has testified at the trial. *Campbell II*, p. 92. If the statute was designed to further the fair and just administration of criminal justice, as this Court has held it was (Campbell I, p. 92), then, as the Solicitor General conceded in *Killian, Clancy* and *Evola*, interview notes should be deemed to qualify as a statement of the witness under (e) (1) and (e) (2).

The extreme notion of the Court below that the Jencks Act should be interpreted to permit an accused to impeach the testimony of a government witness, who is not a government agent, with Jencks Act material in the possession of the government, but to deny to the accused the production of the most effective material, i.e. his original notes, to impeach a government agent who has testified, seems irreconcilable with the objective of the Congress in enacting the Jencks Act not only to preclude any general pillage of government files but to implement and safe-guard the basic constitutional principles of the *Jencks* decision.

(b) The deliberate destruction of interview notes by F.B.I. operatives as standard procedure in the aftermath of the Jencks legislation[112] has been viewed by the federal courts as requiring a "divining" of the *bona fides* of the

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[112] *Cf.* Orfeld, *Discovery During Trial in Criminal Cases: The Jencks Act*, 18 S.W. L.J. 212, 227 (1964); Cleary, *Hickman v. Jencks Jurisprudence of the Adversary System*, 14 Vand. L. Rev. 865, 874-75 (1961), *The Supreme Court, 1960 Term: Federal Criminal Law Enforcement: Discovery*, 75 H.L.R. 40, 179 at 181 fn 575 (1961).

operative in each case coming before them.[113] The result has been that this action pursuant to government policy has become *per se* action in good faith and sanctions have not been visited upon the government.

Assuming, as the lower federal courts have done, that the question is one of good faith to be determined in each particular case, the decision that the operative is in fact acting in good faith is in practice compelled. It would strain the bounds of credulity to believe that the courts are likely to find *mala fides* on the part of the operative when acting in obedience to his master's mandate when that master is the Department of *Justice* itself. The real question, a question that has not been adequately faced in those cases, is whether, regardless of the *bona fides* of the agent, the destruction of the interview notes should render the agent's testimony inadmissable.

The court decisions cited above assume that, if a government agent destroys evidence pursuant to a general directive of his superiors, he necessarily acts in good faith. They assume that the propriety of the government policy is beyond question. There is also inherent in these decisions the presupposition that the unverifiable testimony of a government agent that his interview report accurately embodies statements made to him by the accused or by the witnesses as contained in his interview notes (now reduced to ashes) must be deemed flawless. To the contrary, it is submitted that however able, intelligent, devoted, obedient, loyal, and well-trained FBI agents may be, the philosophy incident to these premises is foreign to the Sixth Amendment right to confrontation and to the American concept

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[113] *Ogden v. United States,* 323 F.2d 818, 820 (9th Cir. 1963); *United States v. Thomas,* supra p. 194; *United States v. Tomaiolo,* 317 F.2d 324, 327 (2d Cir. 1963); *United States v. Greco,* 298 F.2d 247, 249, 250 (2d Cir. 1962).

of due process, fair trial and the fallibility of the state and its agents.

When, as in the case at bar, important interview notes made by an F.B.I. agent of statements made to him by a defendant and a witness are willfully destroyed pursuant to Bureau policy, is not the inference irresistible that the only conceivable purpose of the policy is to circumvent the decision of this Court in *Jencks* and the later Jencks Act by precluding at the trial any verification of the interview report with the agent's actual notes of statements made to him by the witness? What other purpose could there be?

When a government agency directs its agents to destroy interview notes after they have been allegedly reduced to an interview report, the obvious effect is to preclude any comparison of the interview report with the agent's actual notes contemporaneously made with respect to statements made to him by the witness. No government department or bureau could prepare and promulgate instructions directing the *immediate* destruction of the notes without consideration of this evident consequence of the directive. Since no other conceivable purpose is served by such a policy, it must be assumed that this is its objective.[114] The destruction of such significant basic data by government agents is morally intolerable and shocks the conscience.

It was especially important in this case that access to the notes of the FBI agents be available to the defense. The original notes of agent Milne might well have confirmed Buarque's testimony that he met Edlin and Robinson in the spring of 1960, he told Milne that and thus Milne made an error—"1961" for "1960"—in his interview re-

[114] It would not appear that the Treasury Department has such a policy. See *Clancy* at 314.

port prepared from his notes. FBI agent, Strickland, testified that a significant fact was *not* related to him by Robinson. Thus Strickland was not testifying as to statements contained in his narrative report but as to what he claimed Robinson had not said to him. It became crucial for the defense to show that the FBI agent's interview report to his superiors, though signed by Robinson, did not include the additional statement Robinson testified he made to Strickland. This could be done only by the production of the contemporaneous interview notes denied the defense.

The important issue here should not be resolved in terms of the "good faith" or "bad faith" of the administrative policy of the government or in terms of the mental state of the F.B.I. agent in acting pursuant to that policy. Nor should the imposition of the sanctions of Section 4 of the Jencks Act be dependent upon whether the administrative policy was permissibly or impermissibly inaugurated to circumvent the decision in *Jencks* or the Jencks Act or to preclude cross-examination with respect to the contents of the notes or even to serve some other purpose. A sound public policy should not require the judiciary to inquire into the good faith of government officials except when such an inquiry is unavoidable.

An unlawful search or seizure is not resolved in terms of whether the police officers acted pursuant to administrative policy or upon the instructions of their superiors. Nor is the issue of the validity of a confession determinable in terms of a directive contained in a police manual. As the *Jencks* Act was designed not only to overrule exaggerated decisions of the lower federal courts misinterpreting *Jencks* but also to implement the Sixth Amendment right of confrontation and due process declared in *Jencks*, the statutory

remedy of Section 4 of the Jencks Act cannot depend upon the purpose or propriety of administrative policy.

The *Jencks Act* itself provides that in the case of dispute as to whether material is to be given to the defendant" . . . the entire text of such statement shall be preserved by the United States . . ." pending appeal by the defendant. This statutory language indicates that the requirement that the material in question must be" . . . in the possession of the United States . . ." was not intended to allow the government to suppress Jencks Act material by the simple expedient of destroying it and so deny the benefits of the Act to a defendant.

The Fourth Circuit recognized in this case the basic unfairness of the F.B.I. policy directing that interview notes be destroyed. 337 F.2d 180, 202. The Second Circuit has agreed that "it would be the better practice to preserve written notes taken on interviews of persons accused or suspected of crime." *United States v. Thomas,* 282 F.2d 191, 194 (1960). In *Killian v. United States,* 368 U.S. 231, 242 (1961) the opinion for this Court of Mr. Justice Whittaker contains the *dictum* that, if notes were destroyed by agents in good faith and in accord with normal practice, their destruction did not constitute an inpermissible destruction of evidence nor deprive petitioner of any right. But in its later opinion in *Campbell II* (*Campbell v. United States,* 373 U.S. 487 (1963)) this Court made clear that it did not accept that *dictum* by holding that in that case the Court had not considered whether sanctions should attach to the destruction by the special agent of his interview notes pursuant to F.B.I. policy. The Court was careful to state "we intimate no view on the correctness of the Court of Appeals' rulings on this" i.e., that the destruction of the notes was in good faith. (p. 491, note 5).

In *Wilson v. United States*, 162 U.S. 613, 621 (1896) it was held that the willfull destruction or suppression of evidence by an accused gives rise to a presumption of guilt. Unless an alien concept of infallible statism is to be exalted, the deliberate destruction by government agents of evidence, whether pursuant to administrative policy or not, should be deemed also suppression of evidence and thus repugnant to basic principles of due process, fair play and fair trial. The contrary view would mean that there is a nigh irrebuttal presumption that the interview report of a government agent is an accurate recital of oral statements made to him by a witness as recorded contemporaneously in his notes and the agent's unverifiable testimony to this effect is so sacrosanct as to be beyond inquiry. It is submitted that such an assumption is not compatible with the Sixth Amendment right of confrontation and present concepts of due process. Nor is it consistent with the context, high purpose and spirit of the Jencks Act.

This Court has held that suppression by the prosecution of material evidence favorable to an accused violates due process "irrespective of the good faith or bad faith of the prosecution"[115] thus clearly recognizing the basic constitutional right of an accused to have access to favorable evidence that is in the hands of the state regardless of the "good" intentions of the prosecution.

Accordingly, it is submitted that the Jencks Act, when interpreted in conformity with the constitutional principles enunciated in *Jencks*, required the production of written interview notes made by government agents and that the willfull destruction of such notes required the imposition

[115] *Brady v. Maryland*, 373 U.S. 83, 87 (1963). See also *Alcorta v. Texas*, 355 U.S. 28 (1957); *Pyle v. Kansas*, 317 U.S. 213 (1942); *Wilde v. Wyoming*, 362 U.S. 607 (1960); *Mooney v. Holohan*, 294 U.S. 103 (1935).

of the sanctions provided in Section 4 of the Act, namely, the exclusion of the agent's testimony.[116]

III

THE DISTRICT COURT WAS WRONG IN REFUSING TO INSTRUCT THE JURY AS TO AN ESSENTIAL ELEMENT OF THE SUBSTANTIVE OFFENSE

Sec. 281 made it an offense when a member of Congress "directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered" in relation to any proceedings or matter in which an executive department of the government of the United States is interested.

The proscribed receipt of compensation cannot be accomplished without an intent on the part of the Congressman to receive the payment as compensation for his alleged services. Accordingly the statute requires concert of action on the part of the receiver and the giver.[117] Although it was not necessary for the jury to find a specific criminal intent, i.e., a conscious purpose of wrongdoing or evil motive, an *essential element of the offense* was that the member of Congress know, understand and appreciate that the payments made to him constituted compensation for the services rendered.[118]

While the statute does not define the meaning of receipt of compensation for the prohibited services rendered, established legal principles with respect to the construction

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[116] If the Jencks Act does not apply, then due process as interpreted in *Jencks*, required the production of the notes of the F.B.I. agents.

[117] *May v. United States*, 175 F.2d 994, 1008-09 (majority opinion) and 1014 (dissenting opinion) (C.A.D.C. 1949).

[118] *United States v. Quinn*, 141 F.S. 622, 627 (S.D.N.Y. 1956).

of a penal statute of this character require the conclusion that a subjective awareness by the actor of the nature of his conduct is an essential element of the offense.[119] In *Smith v. United States*, 361 U.S. 147 (1959) this Court struck down an ordinance not requiring *scienter* on the part of a seller of obscene literature as a precondition of guilt. It held that the ordinance tended to inhibit expression protected by the First Amendment. That reasoning is especially relevant in the case at bar where the First Amendment activities of a Congressman are involved. Without a requirement of subjective awareness of the nature of his conduct under Sec. 281 any member of Congress could be convicted of a felony for his unwitting or unconscious acts.

In order to implement these principles Johnson requested the following instruction which was denied:

> "12. The Court instructs the Jury that, if they find that Johnson sincerely believed at the time the check specified in a substantive count was received by him as compensation for bona fide legal services rendered by him to the savings and loan associations or to the land companies and that such check was not received by him as compensation for his visits to the Depart-

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[119] See generally *Boyce Motor Lines v. United States*, 342 U.S. 337 (1952) involving culpable intent and *Morissette v. United States*, 342 U.S. 246 (1952) where the knowledge requirement is more closely akin to that in the case at bar. See also *Lambert v. California*, 355 U.S. 225 (1957) where this Court struck down a statute making it a criminal offense for persons convicted of a felony to fail to register as convicted felons regardless of their knowledge of the registry requirements. The Court held that a mere failure to register could not be the basis of a criminal charge without actual knowledge by the defendant of the registration requirement. In this case had the defendant Johnson "registered", i.e., informed the Justice Department that he was acting as an attorney in a criminal case and not as a Congressman, a criminal charge would not lie.

ment of Justice, the Jury must find Johnson not guilty as to said substantive count." (App. 969).

The Court also denied Johnson's equivalent requested Instruction 13 (App. 970).[120]

These instructions were vital in the case. Under the substantive counts the co-defendants were charged, and were put on trial, as aiders and abettors of Johnson and the jury's attention was constantly directed during the trial to the attitudes and acts of, and alleged statements made by, these co-defendants out of the presence of Johnson relative to their hopes and intentions with respect to the visits to Justice. Edlin had been quoted by Goldman as saying out of the presence of Johnson and Boykin that Johnson and Boykin "were not getting anywhere with his indictment, that it is costing him a lot of money" (Tr. 1475) and Raines quoted Edlin out of the presence of Johnson as saying "we have friends on the Hill—we have nothing to fear on our indictment. These people are interested in us and the injustice we have been done." (Tr. 172). These statements, hearsay as to Johnson, tended to shift the jury's attention away from the question of *Johnson's understanding* as to the basis of the payments to *Edlin's purpose* in causing the payments to be made. Further, the absence of a *mens rea* instruction in this case made it especially important that the jury's attention be directed at some point to the question of Johnson's understanding of the nature of the payments to him.

A fundamental objective of these instructions was to distinguish between what may have been in the mind of Edlin with respect to these checks, and what may have been in

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[120] After the charge, these instructions were requested again by Johnson's counsel but were denied (App. 112). Johnson's motion for a new trial alleged their denial was prejudicial error. (App. 982).

the mind of Johnson. If the jury believed that Edlin considered that these sums were in payment of Johnson's visits to Justice, that was not enough to permit the jury to convict Johnson of a felony under the substantive counts. For the commission of the alleged crime, Johnson himself must have personally understood that the checks constituted compensation for his visits to Justice. Johnson was not chargeable with Edlin's mental processes but only his own. Edlin's intent was not imputable to Johnson. Johnson could not be convicted of this felony on the ground that he *ought* to have understood that the checks constituted compensation for his visits to Justice. Actual intention not constructive intention, is a prerequisite to guilt. *Robinson v. United States*, 32 F.2d 505, 509 (8th Cir. 1929), (holding in a bribery case that the intention of the donor is not imputable to the donee. Guilt is measured by one's own intention and not by the intent of someone else); *United States v. Henry*, 52 F.Supp. 161, 163 (D. Nev. 1943).[121]

The Court's instructions as to the defendant Johnson's knowledge were vague, ambiguous, and contradictory. The District Court made no distinction between the belief of Edlin and the belief of Johnson with respect to the receipt of the checks. Thus the case went to the jury without an instruction that Johnson's understanding of the transaction had to be determined by the jury as a necessary element of the offense.

The Court charged that it was only when the services referred to in Section 281 are rendered for compensation that there is a violation (App. 102) and that with respect to each check the jury "must consider whether each such check was *given* in whole or in substantial part for serv-

[121] To the same effect 11 C.J.S., Sec. 2, Bribery, p. 844; *People v. Ewald*, 302 Mich. 31, 4 N.W. 2d 456; *People v. Vollmann*, 73 Cal. App. 2d 769, 167 P.2d 545; 12 Am. Jur. 2d, Sec. 6, Bribery p. 752.

ices rendered by Johnson before the Department of Justice within the meaning of Section 281'' (App. 103). (Emphasis added). Thus here the Court directed the jury to consider the purposes of Edlin and Robinson. The Court then stated: ''If you find that the check referred to in Count 2 was received by Johnson as compensation for bona fide legal services rendered by him to the savings and loan associations and later to the land companies, and not, in whole or in substantial part, for services rendered by Johnson before the Department of Justice, then you should find Johnson not guilty on the second count. The same instruction applies with respect to each count 3 to 8 as well as to Count 2'', etc. (App. 104).

After the portions of the charge quoted above, the Court told the jury that, if they found that Johnson did not knowingly receive a check, or a substantial part thereof, as compensation for his visits to Justice, they should acquit under the substantive counts (App. 104). This use of the word ''knowingly'' was clearly not enough because (1) the Court had already confused the jury, i.e., as to who had to know what about whom, by emphasizing the hopes and beliefs of the maker of the checks, (2) it contradicted other parts of the charge, (3) it merely modified the receipt of checks, (4) there was no definition as to its meanings and (5) other portions of the charge, including those quoted above, did not include this adverb.

The Courts' use of the term ''knowingly'' at one point in the charge with respect to Johnson's receipt of the check in question and its use of the phrase ''received as compensation'' in another portion of the charge could not cure the manifest error in its earlier direction to the jury that Johnson's guilt was to be determined by reference to the beliefs of Edlin or Robinson in *giving* the check. The only reasonable view of an attentive juror of these

contradictory instructions would be that there were alternative routes to the conviction of Johnson, namely, conviction could be based on either Edlin's or Robinson's understanding or on Johnson's.

As an elected representative of the people a member of Congress has not only a right, but an affirmative obligation, to protest acts of unfairness or injustice reported to him as having been done by an administrative agency or department of the government. In this case Johnson testified that he had been informed by Edlin and Robinson that the indictment against Edlin had been inspired by competitors, was without a valid basis and was grossly unjust; that by reason of these representations, he had made his visits to the Department of Justice seeking a review of the merits of this criminal case, and that he was not compensated for doing so directly or indirectly and the checks received by him were in payment of legal services rendered the savings and loan associations and later the land companies unrelated to his visits to Justice. Robinson and others testified that these representations had been made to Johnson. He confirmed Johnson's testimony that he had not received, directly or indirectly, any compensation for his visits to Justice.

Although there was no affirmative testimony that the fees paid Johnson for his legal services were excessive, if the jury believed that the payments made to Johnson for his legal services rendered the savings and loan associations and the land companies were excessive, or even merely large, they could have found Johnson guilty of the substantive offenses under the charge of the District Court *even though Johnson sincerely believed that those payments did not represent compensation for his visits to Justice.* The instructions given were at variance with the right, if

not the obligation, of a member of Congress to protest allegedly unfair and unjust administrative acts. Thus they were contrary to the intent of the statute. The instructions allowed a guilty finding in the absence of the requisite understanding of the defendant, Johnson, of the nature of the payments made to him.

CONCLUSION

The decision of the Court of Appeals that the conspiracy count is unconstitutional should be affirmed. The autonomy and independence of Congress and the integrity of our tripartite constitutional system are at stake. While in recent years in the United States the judiciary has been the foremost champion of liberty, this has not always and universally been true. As we have shown, there were times in England when the true champion was the legislature, arrayed against both Crown and judiciary. The time may again recur when uninhibited speech in Congress will be the chief barrier to tyranny.

The holding below on the conspiracy count should be affirmed for the additional reason that it violated Johnson's Fifth and Sixth Amendments rights.

Further, we respectfully submit that this Court should make clear that, in the event of a new trial on the substantive counts, Johnson is entitled to the rudiments of a fair trial, namely, (i) access to the grand jury transcript, (ii) production of the underlying FBI interview notes under the Jencks Act and and the *Jencks* decision and (iii) the essential instructions requested by Johnson.

Alexander Hamilton wrote: "Arbitrary impeachments, arbitrary methods of prosecuting pretended offenses, and arbitrary punishments upon arbitrary convictions have ever

appeared to me to be the great engine of judicial despotism."[122]

Johnson submits his case in the confidence that such an engine cannot exist as long as this Court sits.

Respectfully submitted,

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Counsel wish to acknowledge the valuable assistance rendered in connection with this Brief by Richard J. Himelfarb, a 1965 graduate of the Yale Law School.

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[122] *The Federalist*, p. 462 (The Colonial Press 1901).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 25

UNITED STATES OF AMERICA, *Petitioner*,

v.

THOMAS F. JOHNSON

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF AMICUS CURIAE ON BEHALF OF J. KENNETH EDLIN URGING AFFIRMANCE

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BRIEF OF AMICUS CURIAE ON BEHALF OF J. KENNETH EDLIN URGING AFFIRMANCE

This brief amicus curiae, urging affirmance of the judgment below, is filed on behalf of J. Kenneth Edlin with the consent of the Solicitor General and of counsel for the respondent Johnson.[1]

[1] The written consents have been lodged with the Clerk pursuant to Rule 42(2).

In urging affirmance of the judgment under review, the amicus fully supports the constitutional, historical and practical considerations set forth in the brief of the respondent. Those considerations, fairly viewed, compel the conclusion that Article I, Section 6, Clause 2, of the Constitution was properly applied by the court below with respect to the respondent Johnson.

The main purpose of this brief, however, is to advise the Court of the unresolved status of the appeals of two of the co-defendants in this case and of the pendency of a constitutional issue closely related to the one now under review by this Court.

Among the four co-defendants jointly indicted and tried in this proceeding were J. Kenneth Edlin and William L. Robinson, the other two being former Congressman Thomas F. Johnson and former Congressman Frank W. Boykin. Edlin, Robinson and Johnson all appealed from their judgments of conviction[2] and their appeals were consolidated and heard together by the Court of Appeals for the Fourth Circuit. 337 F. 2d 180. That court reversed the conviction of the respondent Johnson, remanding his case for a new trial on the conflict of interest charges. The court also affirmed outright the convictions of Edlin and Robinson on all counts. Thereupon two procedural steps occurred:

(1) The United States filed a petition for writ of certiorari to review that portion of the judgment below which had reversed the conviction of the respondent Johnson. That petition was granted on January 25, 1965, and the matter is now before this Court for consideration and resolution.

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[2] No appeal was taken by the co-defendant Boykin.

(2) In the meantime, timely petitions for rehearing were filed in the Court of Appeals by both Edlin and Robinson. Edlin's petition in particular emphasized the claim that the court had erred in its ruling, 337 F. 2d at 192, that

> . . . as none of the privileges of Article I, section 6 pertain to the defendants who are not members of Congress, their attack on the first count, unlike Johnson's, is not sustained.

It was pointed out in the petition that the distinction thus drawn between Congressmen and non-Congressmen, as respects the applicability of the constitutional privilege in question, was not only dubious but had not been urged by the Government nor argued by any of the parties. No opportunity had thus been afforded the appellant Edlin to bring to the court's attention the considerations and arguments that are relevant to the distinction made by the court.

Those petitions for rehearing, duly filed on October 26, 1964, have yet to be acted upon by the Court of Appeals.[3] The passage of time since the filings and the nature of the constitutional issue posed make it reasonable to conclude that the Court of Appeals is withholding action on the petitions for rehearing until this Court resolves the constitutional issue raised by the Government in the instant certiorari proceeding.

It thus becomes appropriate to advise this Court briefly as to the nature of the constitutional question as yet not finally resolved by the Court of Appeals, a question that is intimately related to the one now before this Court. In so doing, however, the amicus does

[3] The petition of the appellant Edlin sought in the alternative a rehearing by the original panel or a rehearing by the court en banc.

not intend to press these contentions upon this Court at this time or to ask that the related issue be resolved. On the contrary, the amicus is anxious that the issue not be resolved at this time, either by direction or indirection, so that the Court of Appeals may fully assess the issue in the light of the forthcoming decision of this Court with respect to the availability of the constitutional privilege, under the circumstances, to a Congressman.

The unresolved contentions of the amicus which are thought to make it proper in this instance to extend the constitutional privilege to these particular non-Congressmen, as set forth in the petition for rehearing below, may be summarized as follows:

(1) Article I, Section 6, Clause 2, of the Constitution states that "for any Speech or Debate in either House, they [Senators or Representatives] shall not be questioned in any other Place." Thus, while this provision is frequently spoken of as providing a "privilege" or "immunity" for Congressmen, it actually puts its emphasis on forbidding the *questioning* of Congressmen outside their respective Houses. The provision plainly means that such questioning is forbidden under any circumstances outside of Congress.

(2) In order that the full, liberal design of this constitutional language may be given effect, this provision would appear applicable, in the words of the court below (337 F. 2d at 188), "whenever the motivation for making a speech is called into question"—be the occasion a criminal or a civil proceeding. And if such motivation is called into question, it becomes immaterial whether the Congressman is a formal defendant in the court proceeding. The Constitution does not speak

of an inquiry or questioning only where a Congressman is a formal party to a proceeding; it prohibits broadly and without limitation any questioning and any inquiry into the Congressman's motives in making a speech in Congress. Thus when such questioning and inquiry become central to a criminal charge or conviction of any person—be he a Congressman or a non-Congressman—the plain language and the public policy of the constitutional provision would appear applicable.

(3) The problem thus raised is not merely one in terms of the applicability or scope of the constitutional prohibition. It is also a problem as to the jurisdiction of the court before which a criminal or civil proceeding is pending. As the court below ruled, 337 F. 2d at 191, "the privilege being applicable, courts are barred from exercising jurisdiction" over the case. And if that be true, a court would have no jurisdiction to hear or decide a civil or criminal charge against *any* person if the complaint or indictment necessarily calls for an inquiry into, or a questioning of, a Congressman's motives for making a speech. See *Ex parte Wason,* 4 Q.B. 573 (1869), where a conspiracy indictment against both members and non-members of Parliament was dismissed since the motives of the members were necessarily put in issue.

(4) The central issue accordingly becomes one of determining whether the charge that the appellant Edlin conspired with others to pay Congressman Johnson to deliver a speech in the House of Representatives so necessarily involves a questioning or inquiry of the Congressman's motives as to fall beyond the jurisdiction of the District Court in this proceeding. If, in the course of proving such a conspiracy charge, it be-

comes essential to inquire into and evaluate the Congressman's motives, then the constitutional prohibition would operate to bar both the inquiry and the prosecution. As in the *Wason* case, the alleged conspiracy would not be "an indictable offense" within federal jurisdiction.

(5) So stating the issue, the appellant Edlin contends that the conspiracy count as to him was as constitutionally defective as it was relative to Congressman Johnson. To convict Edlin, it was necessary, to use the lower court's language (337 F. 2d at 189), to launch "an inquiry into Johnson's reason for delivering the speech, the very inquiry which the Supreme Court has explicitly declared to be beyond a court's power." There is, as the opinion below amply demonstrates, a complete identity between the forbidden evidence used to convict Johnson and that used to convict Edlin and Robinson. The very same inquiry, the very same evidence as to Johnson's motives, underlay the whole conspiracy charge and the conviction of the non-Congressmen.

(6) Thus the questioning of the Congressman, made necessary to secure the conviction of all the co-conspirators, called forth the constitutional prohibition with respect to the entire prosecution. And the resulting proscription of the conspiracy charge as to Edlin is fully consonant with the public policy underlying the constitutional provision in question. That policy was recognized by the court below to be one of promoting the independence of all Congressmen in the fulfillment of their public trust by avoiding restraint on free expression on the floor of either House. 337 F. 2d at 189, 191. The hazard or threat of criminal or civil inquiry into the good faith of legislative speech "may in

itself be so devastating that an innocent congressman may well fear it." 337 F. 2d at 191.

The devastating effect of potential inquiry is no less evident, however, where the inquiry takes place in a criminal or civil proceeding to which the Congressman is not a party. Can it be denied that free expression is inhibited by the threat of inquiring into a Congressman's motives in the course of a court action involving only his wife, his administrative assistant, a constituent, a friend—or even a stranger? Is the evil of inhibition any less meaningful because the Congressman himself is not a party to the proceeding or because he is not a named co-defendant? Might he not be compelled, at the pain of inhibiting his freedom of expression, to obey his conscience or a court subpoena to defend and explain his motives in this type of proceeding? Indeed, how can a non-legislative defendant adequately defend himself against the kind of conspiracy indictment here involved without calling the Congressman as a witness to explain and defend his motives in making the speech? And if such a defendant called the Congressman as a witness, could the latter be compelled to answer questions as to his motives?

These are but a few of the many questions inherent in the fact that a Congressman does not operate in a vacuum, unmindful of the possibility of others being charged with unduly influencing or perverting his actions and words on the floor of Congress. Unless he is protected against inquiries as to his motives in such circumstances, the evil which the constitutional provision was designed to preclude may well ensue. And the constitutional provision would soon lose the liberality of its intended scope.

In sum, Article I, Section 6, Clause 2, of the Constitution "nullifies sophisticated as well as simple-minded modes" (cf. *Lane* v. *Wilson,* 307 U.S. 268, 275) of questioning a Congressman for having delivered a speech in the House or Senate. To instill effective meaning into this provision, the questioning must be banned wherever it arises in any court action; and any complaint or indictment which is necessarily premised upon such questioning must be considered beyond the jurisdictional ken of courts.

Such, then, is the nature of the constitutional question posed by the amicus in his unresolved petition for rehearing in the Court of Appeals. There are, of course, other questions raised in that petition, such as (a) whether the use of the constitutionally impermissible evidence prejudiced Edlin's right to the unbiased consideration of the jury on the remaining counts, a prejudice found to exist with respect to Johnson; (b) whether Edlin can properly be convicted as an aider and abettor of violations of 18 U.S.C. § 281 where the conviction of Johnson, the principal and the only one could have committed the substantive crime, has been vacated; (c) whether Edlin, as an alleged payer of compensation to a Congressman, can be charged with aiding and abetting a violation of 18 U.S.C. § 281; and (d) whether the totality of prejudice arising from the repeated admission of testimony concerning Edlin's character and past criminal record was so great as to warrant reversal.

As indicated, these various contentions are set forth here so that this Court may be aware of their existence and pendency before the Court of Appeals. They involve considerations that have not been fully briefed or argued by either the Government or counsel for the

amicus. And in the event that this Court affirms the judgment below, as the amicus here urges, these matters will then be ripe for full consideration by counsel and by the court below.

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October 6, 1965

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 25

UNITED STATES OF AMERICA, PETITIONER

v.

THOMAS F. JOHNSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

The central issue in this case is whether the speech or debate clause—designed to foster untrammeled legislative representation of the interests of the electorate—prevents the prosecution of a congressman for the corrupt act of agreeing to take a bribe to make a speech in Congress. The first section of this brief is devoted to comments on respondent's arguments on this question and supplements our main brief, where our position is more fully developed. In the succeeding sections we briefly discuss the additional issues which respondent has asked this Court to reach. These additional issues were fully considered and, in our view, correctly disposed of in the court of appeals. Moreover, most of these points have been

considered at length in previous decisions of this Court—some of them very recent—and respondent's contentions have uniformly been rejected.

I

THE SPEECH OR DEBATE CLAUSE

Respondent does not, and cannot, dispute the point that, conceptually, the act of taking or agreeing to take money to make a speech is quite distinct from the speech itself and that, therefore, a prosecution for such an act need in no way "question" the speech. Respondent contends, however, that prosecutions such as this should be barred on the grounds that, as a practical matter, they inevitably call the motivation of the accused congressman into question and cannot help but have a chilling influence on free legislative speech. He further contends that, even if he is mistaken as to the practical effects of such prosecutions in general, in *this* case there was an undue questioning of his speech and its underlying motivation and a consequent intrusion upon the speech or debate privilege. In our view, neither of these contentions has merit.

1. The court below (see R. 301–302) took the position, which respondent adopts, that even though the government proves the unlawful agreement or the bribe, without relying on the contents of the speech or other official action, the accused congressman is necessarily obliged to explain his motives for the speech or action. It is contended that, in these circumstances, *Tenney* v. *Brandhove,* 341 U.S. 367,

requires the conclusion that no such prosecutions can be maintained. In our view, both premise and conclusion are incorrect. While the congressman charged with agreeing to take a bribe may be called upon, if he is to exonerate himself, to show his motivation in taking the money alleged and proved *prima facie* to have been a bribe, his motives for making the speech or taking any other official action have, at most, indirect relevance. Moreover, under respondent's theory, motivation does not enter the case until the government has made a *prima facie* showing of the offense charged. Thus, as we have previously shown (Govt. Br. 14–15), the situation here is significantly different from that in *Tenney,* in which the content and motives of official legislative conduct were the very foundation of the lawsuit.

In any event, as we argued in our main brief, the view that the privilege applies "whenever the motivation for making a speech is called into question" (R. 299) is too sweeping a formulation. This is sharply demonstrated by the arguments put forth in the Brief of Amicus Curiae (pp. 4–7). Thus, if respondent's analysis is carried to its logical conclusion, it would appear to follow that prosecutions of non-congressmen for offering bribes to congressmen would be barred on the ground that they would "necessarily" involve the prohibited "questioning" of legislative speech. Ironically, immunizing givers as well as receivers of congressional bribes would open the way for the resurrection, in modern dress, of the sale of "protections", perhaps the most venal of the numerous abuses of

legislative power which the framers of our Constitution undeniably intended to suppress (see Govt. Br. 34–35, particularly n. 41).[1]

Respondent's contention that permitting prosecutions of congressmen for agreeing to take bribes in return for speeches or other official acts would have a crippling effect on the legislative process has been decisively refuted by over a century of American history. Legislation proscribing the taking of bribes by members of Congress has been part of the Criminal Code since 1853 (Act of February 26, 1853, 10 Stat. 170); yet the threat of prosecution under these laws has not prevented congressmen from taking unpopular positions or expressing views that have seemed to some to represent narrow economic interests. The judicial privilege—which, although it has a different constitutional background, is essentially the same as the speech or debate privilege in that neither the con-

[1] As our main brief establishes (pp. 19–25), there is nothing in the English history of the development of the speech or debate privilege to indicate that the privilege was intended to bar prosecutions for bribery. There is no warrant for respondent's assertion—without any citation of authority (R. Br. 37–38, 46, 50, 52)—that Strode's case in 1512 shows the opposite. Not only did the prosecution of Strode arise out of his official conduct, but nothing in the historical material indicates that any "financial interest" of his, if such there was, was in any way involved in the action taken by Parliament to assert its privilege of free speech and debate. Nor is the English history as clear as respondent would have it (R. Br. 45, n. 44) on the proposition that only Parliament could punish a bribe-taking member (see Govt. Br. 33, n. 39). But even if it were clear, the precedent would not be controlling in light of the differences underlying the development of the American Congress and the English Parliament (see Govt. Br. 33–34).

tent nor motive of a judicial opinion can be "questioned"—has never been held to bar prosecutions of corrupt judges for taking bribes. And the fact that there have occasionally been such prosecutions has surely not prevented American judges from deciding cases as they see fit—without regard to the decision's popularity with the executive or legislative branch. It is true that, in the normal course of political life, congressmen legitimately receive campaign contributions, and that, therefore, there is somewhat more likelihood that unfounded charges of taking bribes might be brought against a congressman than against a judge. In our view, however, the independence repeatedly evinced by members of Congress—unaffected by the existence of the Federal bribery statute—coupled with the dearth of prosecutions in this field, show that the increased danger is negligible. It cannot be denied that there is a discernible difference between a bribe and a campaign contribution. Congress itself surely recognized the distinction in making bribe-taking by its members an indictable offense, and there is no reason to believe that Federal prosecutors and grand and petit jurors are incapable of making the same distinction.

As pointed out in the leading case of *Coffin* v. *Coffin*, 4 Mass. 1, 27, the central purpose of the speech or debate clause was not to protect legislators "against prosecutions for their own benefit, but to secure the rights of the people * * *." Considering that accepting money to give a legislative speech subverts the normal legislative process—which the speech or

debate clause was designed to protect—and that the framers repeatedly expressed fears of legislative excess (see Govt. Br. 27–30), there are strong indications that the speech or debate clause was not intended to protect a congressman who violates his public trust by agreeing to accept a bribe to make a speech in Congress.[2]

Respondent's argument that, even if the privilege does not extend to prosecutions for bribery, it should cover prosecutions under 18 U.S.C. 371, is without substance.[3] Both the district court (App. 56) and the court of appeals (R. 301) ruled that, for the purpose of determining the applicability of Article I, Section 6, there is no material difference between a prosecution for accepting a bribe and one for conspiracy to defraud the United States by accepting a bribe. Indeed, respondent's own arguments for extending the speech or debate privilege to bar the present prosecution are so broad as to encompass a prosecution on the substantive charge of accepting bribery as well. There is no basis for respondent's allegations that the government relied upon an undefined,

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[2] Contrary to respondent (R. Br. 50–52), nothing in *Ex parte Wason*, 4 Q.B. 573 (1869), contradicts this principle (see Govt. Br. 25–26). *Wason* merely holds that a charge that the defendants "did conspire to deceive the House of Lords by [untrue] statements made in the House of Lords" is not judicially actionable (opinion of Cockburn, J., 4 Q.B. at 575). None of the opinions in that case suggests, however, that a venal anterior agreement to take legislative action is immunized from prosecution under the speech or debate privilege.

[3] Respondent raises other issues relating to the conspiracy count. For clarity, those not directly tied to the speech or debate argument are considered under a separate heading (see *infra*, pp. 9–12).

"open-ended" and "protean" conspiracy in order "to circumvent" the more precise substantive bribery provisions (R. Br. 91–94).[4] The indictment merely reflected the nature of the offense charged; *i.e.*, a single agreement to corrupt respondent in several ways. Under this indictment, as with a charge brought under the bribery statute, the gravamen of the offense is an antecedent corrupt agreement to perform an official act for compensation. Where, as here, a continuing course of conduct rather than a single bribe is involved, use of Section 371 consistently has been deemed appropriate. See, *e.g.*, *Glasser* v. *United States*, 315 U.S. 60, 66; *May* v. *United States*, 175 F. 2d 994 (C.A.D.C.), certiorari denied, 338 U.S. 830; *United States* v. *Manton*, 107 F. 2d 834 (C.A. 2), certiorari denied, 309 U.S. 664.

2. Respondent contends that the speech was so involved in the conduct of his trial as to offend the speech or debate privilege. Even if this allegation were well founded, it would not sustain the decision below that respondent is altogether immune from pros-

[4] There is no merit in respondent's contention that this action could not have been maintained under the bribery statute as it read at the time of the offense. When Congress provided for punishment of any congressman who receives or agrees to receive money "with the intent to have his action, vote, or decision influenced on any question, matter, cause, or proceeding, which may at any time be pending in either House of Congress or before any committee thereof, or which by law may be brought before him in his capacity as such Member" (18 U.S.C. 205 (1958 ed.)), it is clear, we submit, that it intended to cover the receipt of money for a speech on the floor of Congress as to any subject which could be within congressional competence. See 18 U.S.C. 201 (1964 ed.).

ecution. In any event, the contention is without merit. As we demonstrated in our main brief (pp. 16–17), the government met its burden of proof independent of the speech or any inferences therefrom.[5] The testimony cited by respondent (R. Br. 48, 67–68 n. 59) does not show the contrary. The government witnesses he refers to either did not testify about the speech at all or, if they did, did not testify as to the content or the giving of the speech. The reprint of the speech introduced by the government was not used to show the contents of the speech (App. 258–260) and indeed was materially different from the official copy, introduced by respondent (App. 470), in that the reprint bore a special caption inserted for the use, and at the request, of the savings and loan associations (App. 259, 493, 931).

The indictment did not focus impermissibly on the contents of the speech. Paragraph 15 charged that

[5] Although not attacking the court of appeals' express finding that "the evidence [was] sufficient to support a guilty verdict on all counts" (R. 326), respondent complains of the reference by the court and the government to testimony given by witnesses Goldman and Raines which was initially admitted only against co-defendants Robinson and Edlin (R. Br. 10, 82–83; see Tr. 168–172, 421, 429). But reference to this testimony by the court of appeals reflects no misapprehension of the evidence, since it was made in the course of the court's discussion of the sufficiency of the evidence against *all* the defendants (R. 315–320). Moreover, respondent's attorney himself, in cross-examining Raines, referred to Raines' previous testimony, of which he now complains (Tr. 309) and, in cross-examining Mrs. Goldman, had her repeat her testimony as to her conversation with Edlin (Tr. 465). And in his argument to the jury, respondent's attorney referred to both the statements by Mrs. Goldman which he presently questions (Tr. 5928–5929).

among the services respondent agreed to render in exchange for compensation was the making of a floor speech defending independent savings and loan associations (App. 5–6). This reference to the contents of the speech respondent agreed to make was merely descriptive of the service to be performed. It is plain that the charge was founded on the corrupt agreement and not on the contents of the speech. Nor did the district court, in its instructions, focus "the attention of the jury upon Johnson's speech * * * in as definitive a way as was possible" (R. Br. 69). The single sentence from the court's lengthy instructions relied on by respondent was expressly made applicable "particularly to the Defendant Boykin", for whose benefit it was given (App. 93–94). In that portion of the charge, the court merely pointed out that, in case the jury found that the conspiracy relating to the speech was separate from that relating to the Department of Justice, there was no evidence to show that Boykin participated in the first conspiracy.

II

OTHER CHALLENGES TO THE CONSPIRACY COUNT

1. Respondent argues (R. Br. 86–96) that the interpretation given to the word "defraud" (as it appears in 18 U.S.C. 371) by *Hammerschmidt* v. *United States,* 265 U.S. 182, and *Haas* v. *Henkel,* 216 U.S. 462, should now be overruled. But, as the Reviser's Note to Section 371 shows, Congress has fully recognized and accepted the broad interpretation that this

Court adopted. Pointing to a change in the statutory language which was made "[t]o reflect the construction" of the Act in cases such as *Haas,* the Reviser quotes from the opinion in that case as follows: "The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful functions of any department of government" (216 U.S. at 479). This reading of the conspiracy statute, reaffirmed and refined in *Hammerschmidt, supra,* at 188, and approved by Congress, unquestionably embraces the conspiracy charged here. See *May* v. *United States,* 175 F. 2d 994 (C.A.D.C.), certiorari denied, 338 U.S. 830; *United States* v. *Manton,* 107 F. 2d 834 (C.A. 2), certiorari denied, 309 U.S. 664; see also *United States* v. *Vasquez,* 319 F. 2d 381 (C.A. 3); *United States* v. *Bowles,* 183 F. Supp. 237, 246–247 (D. Me.) and cases there collected.[6]

Contrary to respondent (R. Br. 89–90, 92), this long-standing construction of Section 371 does not re-

[6] Respondent's reliance (R. Br. 73–75) on *United States* v. *Gradwell,* 243 U.S. 476, is misplaced. In that case, the charge, *inter alia*, was conspiracy to defraud the United States by bribery of voters in a federal election. This Court held the predecessor of Section 371 inapplicable on the grounds that Congress had "clearly established" its purpose of entrusting the conduct of federal elections to State law and that the conspiracy statute was concerned with "'*Offenses against the Operations of the Government*' as distinguished from the processes by which men are selected to conduct such operations" (243 U.S. at 485; emphasis supplied). Moreover, even this distinction drawn in *Gradwell* has been undermined by more recent decisions in this Court. *United States* v. *Saylor,* 322 U.S. 385; *United States* v. *Classic,* 313 U.S. 299.

sult in "an unpublished penal code of ethics by judicial fiat." The government plainly has the right to "safeguard itself against being defrauded out of its right to administer an intelligent and honest service in the interests of the people." *Curley* v. *United States,* 130 Fed. 1, 9 (C.A. 1), certiorari denied, 195 U.S. 628. Surely, when the means of interfering with this interest are alleged to have been the giving or accepting of a bribe, neither the giver nor the receiver can have any reasonable doubt of the impropriety of his action.

2. The conspiracy count is not vague, indefinite or complex (see R. Br. 76–86). It charged respondent and his co-defendants with entering an agreement to defraud the United States of its governmental functions in two ways: (1) by having Congressman Johnson make a speech in Congress for money and, (2) by having Congressmen Johnson and Boykin, also in exchange for compensation, utilize their official positions to have the Department of Justice dismiss an indictment. The nature and scope of this charge are not, as respondent claims, to be determined solely from an examination of paragraph 14 of the indictment, which states, in general terms, the governmental rights and functions adversely affected by the conspiracy (see App. 3–5). Rather, as the trial court specifically charged (App. 91), paragraph 14 is to be read together with paragraphs 15 through 25 (App. 5–9), which set forth in particularity the objects and purposes of the conspiracy and detail the means employed to achieve them. Read in its entirety, the conspiracy count fairly informed the defendants of the offense with

which they were charged and was such that they could successfully plead former jeopardy in the event of a second prosecution. In these circumstances, the court below (R. 294) and the district court (App. 57–60) correctly held that the conspiracy count was, in the language of Rule 7(c), Fed. R. Crim. P., "a plain, concise and definite written statement of the essential facts constituting the offense charged." See *Hagner* v. *United States,* 285 U.S. 427, 431; *United States* v. *Debrow,* 346 U.S. 374, 376.[7]

III

PRODUCTION OF GRAND JURY MINUTES

A few days before the trial, Francis Finneran—then a potential government witness, but in fact called as a defense witness at the trial (Tr. 5019)—appeared with his attorney at the United States Attorney's office. Because Finneran thought "it would refresh his recollection" (Tr. 9), he and his attorney were permitted to examine, for approximately thirty minutes, the volume of grand jury minutes containing his own testimony and that of his employee, Walter Schultise. It is possible that they also examined the testimony of one James L. Dixon, without the gov-

[7] Respondent's reliance on a portion of a pre-trial colloquy between the trial court and government counsel (R. Br. 79–80) for the proposition that the government did not believe its proof on the conspiracy count would have to be limited to the specifications of paragraphs 15–25 wholly disregards the government's concession, recognized by the trial court (App. 60), "that it will not attempt to prove any purposes and objects of the conspiracy except those set out in paragraphs 15 to 25."

ernment's consent (Tr. 8–10, 21, 62–63).[8] After ascertaining these facts and hearing counsel (Tr. 8–33), the trial court denied the defense motion that it dismiss the indictment or order pre-trial disclosure of "the entire transcript of the testimony of all witnesses submitted before the Grand Jury by the Government" (Tr. 17, 61–66). The court did, however, direct the government to furnish defense counsel with the grand jury testimony of Finneran, Schultise and Dixon. It ruled further that, if it later developed that Finneran or his counsel had examined the testimony of any other grand jury witness, it would promptly consider broadening its ruling (Tr. 63–64).[9]

The relief granted by the district court was plainly appropriate. The spectre of the government's carefully selecting favorable portions of the grand jury testimony to reinforce prosecution witnesses, conjured by respondent (R. Br. 110–112), finds no basis in this record.[10] Indeed, the witness whose memory supposedly was jogged or whose confidence bolstered

[8] The volume they examined was 182 pages in length and contained, in addition, the testimony of four other grand jury witnesses (Tr. 24–25). None of these witnesses (including Schultise and Dixon) testified at trial.

[9] As the trial court found (Tr. 63), there was no evidence to support the claim that any other witness' testimony had been read by Finneran or his attorney, and respondent does not make this claim here.

[10] The district court specifically refused to rule whether, by disclosing the minutes to Finneran, the United States Attorney had violated the secrecy requirement of Rule 6(c), Fed. R. Crim. P. (Tr. 64). However, the court had indicated earlier that, in its view, government counsel was not guilty of any impropriety (Tr. 13–15, 18).

by having seen part of the grand jury minutes was not called to testify for the government, but for the defense. Manifestly, the defense failed to carry the burden of showing a "particularized need" for any additional grand jury testimony, much less for all of it. See *Pittsburgh Plate Glass Co.* v. *United States*, 360 U.S. 395, 400; *United States* v. *Procter & Gamble*, 356 U.S. 677, 683.[11]

Respondent's broader, apparently constitutional, claim that fairness always requires pre-trial disclosure of all grand jury testimony is also without substance. As the court below pointed out, secrecy is not maintained for the benefit of the government but "for the benefit of the grand jury and for the betterment of grand jury proceedings" (R. 314–315). The notion of wholesale discovery "runs counter to 'a long-established policy' of secrecy * * * older than our Nation itself." *Pittsburgh Plate Glass, supra*, at 399. Respondent submits no reasons for departing from this principle which were not very recently considered and rejected by this Court in *Pittsburgh Plate Glass* and *Procter & Gamble, supra.*

IV

PRODUCTION OF AGENTS' NOTES UNDER 18 U.S.C. 3500

As rebuttal witnesses, the government called F.B.I. agent Milne, who described an interview he had with respondent's administrative assistant, Manuel Buar-

[11] It is noteworthy that respondent has abandoned his theory of "particularized need" presented to, and properly rejected by, the courts below (see R. 313–314).

que (Tr. 5468–5471), and F.B.I. agent Strickland, who testified as to his interview with co-defendent Robinson (Tr. 5476–5481). On cross- and re-direct examination, both agents stated that they had taken notes at these interviews, but that these were destroyed in accordance with F.B.I. procedure after they had been used to prepare formal reports (Tr. 5473–5475, 5479–5482, 5484–5485). Agent Strickland's report—which the agent said was a "verbatim copy" of what Robinson had told him (Tr. 5484)—was prepared at the time of the interview and was shown to Robinson, who made some corrections and signed it. This report was made available to the defense (Tr. 5479–5480). Agent Milne, whose report was also turned over to defense counsel for use at trial (Tr. 5472–5473), testified that he had dictated the report from his notes, and that the notes were destroyed after he had carefully proofread the interview report for accuracy and initialed it (Tr. 5475; see Tr. 5473–5474). The district court denied the defense motion to strike both agents' testimony (Tr. 5474, 5486–5487).

Even if the notes in question were producible "statements" under 18 U.S.C. 3500—which, we submit, they were not—it is clear that their destruction was not improper. Consequently, there would be no warrant for excluding the agents' testimony. This Court's ruling in *Killian* v. *United States*, 368 U.S. 231, 242, is fully applicable here:

> As to petitioner's contention that the claimed destruction of the agents' notes admits the destruction of evidence, deprives him of legal rights and requires reversal of the judgment,

> it seems appropriate to observe that almost everything is evidence of something, but that does not mean that nothing can ever safely be destroyed. If the agents' notes of [the witness'] oral reports of expenses were made only for the purpose of transferring the data thereon to the receipts to be signed by [the witness], and if, after having served that purpose, they were destroyed by the agents in good faith and in accord with their normal practice, it would be clear that their destruction did not constitute an impermissible destruction of evidence nor deprive petitioner of any right. * * *

See also *United States* v. *Hilbrich,* 341 F. 2d 555, 557 (C.A. 7), certiorari denied, 381 U.S. 941; *Ogden* v. *United States,* 323 F. 2d 818, 820–821 (C.A. 9), certiorari denied, 376 U.S. 973; *United States* v. *Greco,* 298 F. 2d 247, 249–250 (C.A. 2), certiorari denied, 369 U.S. 820.[12]

Although, in the circumstances, the question whether the notes are producible under Section 3500 need not be reached, we wish to point out that the court below was correct in ruling (R. 322–323) that

[12] *Campbell* v. *United States,* 373 U.S. 487, relied on by respondent (R. Br. 123), in no way undermines *Killian.* There, unlike the situation here and in *Killian,* the "precise words" in the destroyed notes were read to the interviewee, who "had adopted this presentation" as his own (373 U.S. at 491–492). The Court in *Campbell* found it unnecessary to decide whether the sanction of 18 U.S.C. 3500(d) should apply, but pointed out that the agent's interview report, which was essentially a copy of the notes, would be available to the defense upon a new trial (see 373 U.S. at 491, n. 5, 495, n. 10).

the plain language and clear intent of the Act foreclose respondent's contention that the agents' notes were producible as "statements" of defendant Robinson and defense witness Buarque. Nor, as the court below ruled (R. 323), may the notes be considered as producible "statements" of the F.B.I. agents. The statute expressly provides only for the production of a "statement or report [as defined by Section 3500(e)(1) and (2)] in the possession of the United States which was made by a Government witness * * * (other than the defendant) *to an agent of the Government* * * *." [Emphasis supplied.] Personal work notes such as were involved here, retained by the interviewer and not communicated to any other government agent, are not within the reach of the statute.[13] The legislative history and case law supporting this view are set forth at length in the government's brief in *Needelman* v. *United States,* No. 278, O.T. 1959, pp. 17–31, certiorari dismissed as improvidently granted, 362 U.S. 600.

[13] Of course, an agent's notes may be the "statement" of a government witness when they embody the witness' communication to the agent and also meet the standards of Section 3500(e)(1) and (2). Production of such notes, unlike the notes involved here, fulfills the congressional purpose of providing a communicated statement, attributable to the declarant, to test the declarant's credibility on cross-examination. See *Palermo* v. *United States*, 360 U.S. 343, and the government's brief in *Needelman*, *supra*.

V

THE SUBSTANTIVE COUNTS

An examination of the relevant portions of the trial court's instructions on the substantive counts [14] (App. 99–105) refutes respondent's claim (R. Br. 125–131) that the court improperly focused on Edlin's intent in paying respondent rather than on respondent's intent in receiving the money. At several points in his charge on this issue, the trial judge made clear that, in order to convict respondent under 18 U.S.C. 281, the jury had to find that he knowingly received compensation for his services before the Department of Justice (App. 102–104). In this context, it is frivolous to suggest that the one occasion where the word "given" was used instead of "received" (App. 103), fatally prejudiced respondent (see opinion of the court of appeals, R. 325).

[14] In our petition for a writ of certiorari (p. 11, n. 5) we expressly reserved the right to argue that reversal of the conviction on the conspiracy count because of the speech or debate clause does not require reversal of the conviction on the substantive counts, which in no way involved the speech. In light of respondent's discussion of the substantive counts, we wish to make clear that our decision not to argue that point in our brief on the merits was based solely on the ground that that issue was not one of general importance. We continue to disagree with the court of appeals' reversal of respondent's conviction on the substantive counts. In our view, the evidence, arguments and instructions as to the two types of counts were clearly distinct, and there was no prejudice to the respondent in the trial of this case.

CONCLUSION

For the foregoing reasons and the reasons set forth in our main brief, it is respectfully submitted that the judgment of the court of appeals should be vacated and the judgment of conviction reinstated on all counts.

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SUPREME COURT OF THE UNITED STATES

No. 25.—October Term, 1965.

United States, Petitioner, *v.* Thomas F. Johnson.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[February 24, 1966.]

Mr. Justice Harlan delivered the opinion of the Court.

Respondent Johnson, a former United States Congressman, was indicted and convicted on seven counts of violating the federal conflict of interest statute, 18 U. S. C. § 281 (1964 ed.),[1] and on one count of conspiring to defraud the United States, 18 U. S. C. § 371 (1964 ed.).[2] The Court of Appeals for the Fourth Circuit set aside the conviction on the conspiracy count, 337 F. 2d 180, holding that the Government's allegation that Johnson

[1] "Whoever, being a Member of or Delegate to Congress, . . . directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

[2] "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both."

had conspired to make a speech for compensation on the floor of the House of Representatives was barred by Art. I, § 6, of the Federal Constitution which provides that "for any Speech or Debate in either House, they [Senators and Representatives] shall not be questioned in any other Place." The Court of Appeals ordered a new trial on the other counts, having found that the evidence adduced under the unconstitutional aspects of the conspiracy count had infected the entire prosecution.

The conspiracy of which Johnson and his three co-defendants were found guilty consisted, in broad outline, of an agreement among Johnson, Congressman Frank Boykin of Alabama, and J. Kenneth Edlin and William L. Robinson who were connected with a Maryland savings and loan institution, whereby the two Congressmen would exert influence on the Department of Justice to obtain the dismissal of pending indictments of the loan company and its officers on mail fraud charges. It was further claimed that as a part of this general scheme Johnson read a speech favorable to independent savings and loan associations in the House, and that the company distributed copies to allay apprehensions of potential depositors. The two Congressmen approached the Attorney General and the Assistant Attorney General in charge of the Criminal Division and urged them "to review" the indictment. For these services Johnson received substantial sums in the form of a "campaign contribution" and "legal fees." The Government contended, and presumably the jury found, that these payments were never disclosed to the Department of Justice, and that the payments were not bona fide campaign contributions or legal fees, but were made simply to "buy" the Congressman.

The bulk of the evidence submitted as to Johnson dealt with his financial transactions with the other con-

spirators, and with his activities in the Department of Justice. As to these aspects of the substantive counts and the conspiracy count, no substantial question is before us. 18 U. S. C. § 371 has long been held to encompass not only conspiracies that might involve loss of government funds, but also "any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government." *Haas* v. *Henkel*, 216 U. S. 462, 479. No argument is made, nor do we think that it could be successfully contended, that the Speech or Debate Clause reaches conduct, such as was involved in the attempt to influence the Department of Justice, that is in no wise related to the due functioning of the legislative process. It is the application of this broad conspiracy statute to an improperly motivated speech that raises the constitutional problem with which we deal.[3]

I.

The language of the Speech or Debate Clause clearly proscribes at least some of the evidence taken during trial. Extensive questioning went on concerning how much of the speech was written by Johnson himself, how much by his administrative assistant, and how much by outsiders representing the loan company.[4] The Govern-

[3] Only the question of the applicability of the Speech or Debate Clause to the prosecution of Johnson is before us. The Court of Appeals affirmed the convictions of co-defendants Edlin and Robinson whose appeals were consolidated with that of Johnson and, except for a brief as *amicus curiae* submitted by Edlin, questions raised in those cases have not been presented to us. The defendant Boykin took no appeal from his conviction.

[4] See direct examination by the prosecution of Martin Heflin, App. 182–191, esp. 189–190:

"Q. What, if anything, did Congressman Johnson do with the material which Mr. Robinson brought in and gave to him? A. As

ment Attorney asked Johnson specifically about certain sentences in the speech, the reasons for their inclusion and his personal knowledge of the factual material supporting those statements.[5] In closing argument the

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I recall, Mr. Johnson said that his administrative assistant . . . would go over the material, too and if I am not mistaken, Mr. Johnson called him in and Buarque took the material and I left the office with Mr. Buarque to discuss it some more.

. . . . . .

"Q. After that meeting did you at any time thereafter have any contact either with Congressman Johnson or his office with regard to the speech? A. I telephoned a time or two there and I think I was called by Mr. Buarque and asked him about certain figures that the Institute—background material that might be supplied, and I did supply additional material and I believe Mr. Buarque sent me a draft, himself, with certain places, blank places for figures to be filled in. We had a discussion about some of the technical phases [*sic*] and information, statistical information and so forth.

"Q. You supplied some of the facts and figures for the draft that Mr. Buarque sent you? A. Yes.

"Q. What did you do with that draft once you had looked it over? A. Returned it."

See also cross-examination of Manual Buarque, App. 488–494; cross-examination of co-defendant Robinson, App. 772–775; cross-examination of defendant Johnson, Transcript 79–93.

[5] See cross-examination of Johnson, Transcript, at 84–86:

"Q. And did you not tell Mr. Heflin when he came to see you in your office after that luncheon that he should work with Mr. Buarque on the preparation of the speech which was ultimately given on June 30? A. My statement is the same as it has always been that Mr. Heflin came to my office, representing himself as a public relations man, for a certain institute of Independent Savings and Loan Associations. He had the article of one of the local newspapers. A very unfair attack which he claimed had been made on savings and loans. He talked with me a very short time. I told him that Mr. Buarque, my administrative assistant, did all of my writing, all of the conversations and if there were any answers

theory of the prosecution was very clearly dependent upon the wording of the speech.[6] In addition to questioning the manner of preparation and the precise in-

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to be made,—he went out with me to the next room, met Mr. Buarque and I left the two together.

. . . . . .

"Q. You told him, did you not, that he should work with Mr. Buarque on the matter since Mr. Buarque prepared your speeches? A. I told him at the time to discuss it with Mr. Buarque and any arrangements Mr. Buarque wanted to make, why, he, of course, would be cooperative with him.

. . . . . .

"Q. Now, you say that at that time—I assume you meant at the time of the speech—that one savings association meant nothing more to you than another. Is that what you referred to? A. Not only then but following the speech, too.

"Q. I believe you testified on direct examination that you did not know the name of First Continental Savings and Loan or First Colony Savings and Loan at the time this speech was delivered on June 30, is that your testimony? A. I think my testimony is that one name did not mean more than another.

. . . . . .

"Q. Now, your speech was finally delivered or submitted to the clerk and it was printed in the Congressional Record, and it stresses the value of commercial mortgage guaranty insurance, does it not? A. I think it has a reference to it, yes.

"Q. Isn't it a fact that at the time of the speech, First Continental and First Colony were the only independent savings and loan associations in the State of Maryland which carried commercial mortgage guaranty insurance? A. I have no knowledge of that and did not know at the time.

"Q. You have no knowledge of that? A. None, whatever.

"Q. As a matter of fact, that language in your speech, Congressman, was a part of the language which Mr. Edlin emphasized in his reprint, was it not? A. May I say that I did not see any of the so-called 'reprints.'"

And at Transcript p. 91:

"Q. Congressman, do you mean to tell the jury that Mr. Buarque put that language in the speech about three indicted institutions

[*Footnote 6 on page 6*]

gredients of the speech, the Government inquired into the motives for giving it.[7]

The constitutional infirmity infecting this prosecution is not merely a matter of the introduction of inadmis-

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and none convicted, and you did not inquire as to which particular institutions they were? A. He did not tell me which they were, the names.

"Q. Well, let me ask you this: How could you, if you did not know which institutions were under indictment, how could you make this statement in your speech:

"'I personally do not know any of these institutions nor any of the circumstances leading to their respective indictments. I hold no brief for any of them, one way or another.'

"That is the language of your speech, is it not? A. Yes, I said that is the prepared speech which had been testified that Mr. Buarque with some help from Heflin, prepared."

[6] See Oral Argument on behalf of the Government, Transcript, 232–248, esp. 244–245:

"I submit to you members of the jury, there is no other logical explanation you can make but that that speech was made solely for the purposes of Mr. Kenneth Edlin. It was a day's work for a day's pay for the man to whom he was selling his Congressional Office and his Congressional influence.

"Congressman Johnson has claimed on the stand in this case that he did not then know that the First Colony Savings and Loan Association was then under indictment.

"Now, you will recall the language in the speech, itself, that out of 400 independent savings and loan associations in Maryland, exactly three of them have been indicted and none convicted.

"[']Personally, I do not know any of these indicted institutions nor any of the circumstances leading to their respective indictments. I hold no brief for any of them one way or the other.[']

"Congressman Johnson claimed under oath, Members of the Jury, that he did not even bother to check the facts to ascertain whether he could truthfully make such a statement in his speech.

"If so, I submit to you, it was utterly and completely irresponsible and reprehensible, but the Government submits that that is not so and that that was not a fact. The Government submits that Congressman Johnson did know at that time that both First Colony

[*Footnote 7 on page 7*]

sible evidence. The attention given to the speech's substance and motivation was not an incidental part of the Government's case, which might have been avoided by omitting certain lines of questioning or excluding certain evidence. The conspiracy theory depended upon a showing that the speech was made solely or primarily to serve private interests, and that Johnson in making it was not acting in good faith, that is, that he did not prepare or deliver the speech in the way an ordinary Congressman prepares or delivers an ordinary speech. Johnson's defense quite naturally was that his remarks were no different from the usual congressional speech, and to rebut the prosecution's case he introduced speeches of several other Congressmen speaking to the same general subject,

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and Mr. Edlin were then under indictment in this very Court and that he, nevertheless made those statements in the speech which he delivered on June 30, 1960.

"Those statements, Members of the Jury, the Government submits were completely untrue and deceitful."

[7] See, *e. g.*, cross-examination of Johnson, Transcript, at 79–81:

"Q. Now, Congressman, you told Mr. Estabrook on December 20, 1961, in London, did you not, that this speech had been made at the urging of several of your own people or of your own constituents? Is that not a fact? A. Which conference are you speaking of with Mr. Estabrook?

. . . . .

"Q. As a matter of fact, then, except for Mr. Buarque, whom you term a constituent, no constituent of yours ever spoke to you about making that speech on the floor of the House of Congress, is that not correct? A. It could be. I do not recall.

"Q. You would be—you would not deny it? A. No.

"Q. Is it not a fact that prior to that speech Congressman, you had never discussed savings and loan programs or problems with any of your constituents on the Eastern Shore of Maryland? A. Oh, I think possibly I had. I do not know to what degree but I want to say too, that the speech you refer to there was a motivation that Mr. Buarque testified that I was interested in a statewide election for the Senate in 1964."

argued that his talk was occasioned by an unfair attack upon savings and loan associations in a Washington, D. C. newspaper, and asserted that the subject matter of the speech dealt with a topic of concern to his State and to his constituents. We see no escape from the conclusion that such an intensive judicial inquiry, made in the course of a prosecution by the Executive Branch under a general conspiracy statute, violates the express language of the Constitution and the policies which underlie it.

II.

The Speech or Debate Clause of the Constitution was approved at the Constitutional Convention without discussion and without opposition. See 5 Elliot's Debates 406 (1836 ed.); 2 Records of the Federal Convention 246 (Farrand ed. 1911). The present version of the clause was formulated by the Convention's Committee on Style, but the original vote of approval was of a slightly different formulation which repeated almost verbatim the language of Article 5 of the Articles of Confederation: "Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress . . . ." The language of that Article, of which the present clause is only a slight modification, is in turn almost identical to the English Bill of Rights of 1689: "That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament." 1 W. & M., Sess. 2, c. 2.

This formulation of 1689 was the culmination of a long struggle for parliamentary supremacy. Behind these simple phrases lies a history of conflict between the Commons and the Tudor and Stuart monarchs during which successive monarchs utilized the criminal and civil

law to suppress and intimidate critical legislators.[8] Since the Glorious Revolution in Britain, and throughout United States history, the privilege has been recognized as an important protection of the independence and integrity of the legislature. See, *e. g.*, Story, Commentaries on the Constitution, § 866; 2 The Works of James Wilson 37–38 (Andrews ed. 1896). In the American governmental structure the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders. As Madison noted in Federalist No. 48:

> "It is agreed on all sides, that the powers properly belonging to one of the departments, ought not to be directly and compleatly administered by either of the other departments. It is equally evident, that neither of them ought to possess directly or indirectly, an overruling influence over the others in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating therefore in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary; the next and most difficult task, is to provide some practical security for each against the invasion of the others. What this secucurity ought to be, is the great problem to be solved." (Cooke ed.).

The legislative privilege, protecting against possible prosecution by an unfriendly executive and conviction

[8] See generally C. Wittke, The History of English Parliamentary Privilege (Ohio State Univ. 1921); Neale, The Commons' Privilege of Free Speech in Parliament, in Tudor Studies (Seton-Watson ed. 1924).

by a hostile judiciary, is one manifestation of the "practical security" for ensuring the independence of the legislature.

In part because the tradition of legislative privilege is so well established in our polity, there is very little judicial illumination of this clause. Clearly no precedent controls the decision in the case before us. This Court first dealt with the clause in *Kilbourn* v. *Thompson*, 103 U. S. 168, a suit for false imprisonment alleging that the Speaker and several members of the House of Representatives ordered the petitioner to be arrested for contempt of Congress. The Court held first that Congress did not have power to order the arrest, and second that were it not for the privilege, the defendants would be liable. The difficult question was whether the participation of the defendants in passing the resolution ordering the arrest was "speech" or "debate." The Court held that the privilege should be read broadly, to include not only "words spoken in debate," but anything "generally done in a session of the House by one of its members in relation to the business before it." 103 U. S., at 204.

In *Tenney* v. *Brandhove*, 341 U. S. 367, at issue was whether legislative privilege protected a member of the California Legislature against a suit brought under the Civil Rights statute, 8 U. S. C. §§ 43, 47 (3) (1948 ed.), alleging that the legislator had used his official forum "to intimidate and silence plaintiff and deter and prevent him from effectively exercising his constitutional rights of free speech and to petition the Legislature for redress of grievances . . . ." 341 U. S., at 371. The Court held a dismissal of the suit proper; it viewed the state legislative privilege as being on a parity with the similar federal privilege, and concluded that

> "The claim of an unworthy purpose does not destroy the privilege . . . . The holding of this Court in

Fletcher v. *Peck*, 6 Cranch 87, 130, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned." 341 U. S., at 377.

III.

Kilbourn and *Tenney* indicate that the legislative privilege will be read broadly to effectuate its purposes; neither case deals, however, with a criminal prosecution based upon an allegation that a member of Congress abused his position by conspiring to give a particular speech in return for remuneration from private interests. However reprehensible such conduct may be, we believe the Speech or Debate Clause extends at least so far as to prevent it from being made the basis of a criminal charge against a member of Congress of conspiracy to defraud the United States by impeding the due discharge of government functions. The essence of such a charge in this context is that the Congressman's conduct was improperly motivated, and as will appear that is precisely what the Speech or Debate Clause generally forecloses from executive and judicial inquiry.

Even though no English or American case casts bright light on the one before us [9] it is apparent from the history of the clause that the privilege was not born primarily of a desire to avoid private suits such as those in *Kilbourn* and *Tenney*, but rather to prevent intimidation by the executive and accountability before a possibly hostile judiciary. In the notorious proceedings of King Charles I against Elliot, Hollis, and Valentine, 3 Howell St. Tr. 294 (1629), the Crown was able to imprison

[9] Compare *The King* v. *Boston*, 33 Commw. L. R. 386 (Austl. 1923); *The Queen* v. *White*, 13 Sup. Ct. R. 322 (N. S. W. 1875); *Regina* v. *Bunting*, 7 Ont. 524 (1885), for commonwealth cases dealing with the general question of liability of legislators for bribery in distinguishable contexts. See 78 Harv. L. Rev. 1473, 1474.

members of Commons on charges of seditious libel and conspiracy to detain the Speaker in the chair to prevent adjournment.[10] Even after the restoration, as Holdsworth noted, "[t]he law of seditious libel was interpreted with the utmost harshness against those whose political or religious tenets were distasteful to the government." 6 Holdsworth, A History of English Law, 214 (1927). It was not only fear of the executive that caused concern in Parliament but of the judiciary as well, for the judges were often lackeys of the Stuart monarchs,[11] levying punishment more "to the wishes of the crown than to the gravity of the offence." Holdsworth, *supra*, at 214–215. There is little doubt that the instigation of criminal charges against critical or disfavored legislators by the executive in a judicial forum was the chief fear prompting the long struggle for parliamentary privilege in England and, in the context of the American system of separation of powers, is the predominate thrust of the Speech or Debate Clause. In scrutinizing this criminal prosecu-

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[10] The court in that case attempted to distinguish between the true privilege and unlawful conspiracies:

"And we hereby will not draw the true Liberties of Parliament-men into question; to wit, for such matters which they do or speak in a parliamentary manner. But in this case there was a conspiracy between the Defendants to slander the state, and to raise sedition and discord between the king, his peers, and people; and this was not a parliamentary course.

. . . . . .

"That every of the Defendants shall be imprisoned during the king's pleasure: Sir John Elliot to be imprisoned in the Tower of London, and the other Defendants in other prisons." 3 Howell St. Tr., at 310.

See the account in Taswell-Langmead's English Constitutional History (Plucknett ed. 1960), at 376–378. After the Restoration, some 38 years after the trial, Parliament resolved that the judgment "was an illegal judgment, and against the freedom and privilege of Parliament." The House of Lords reversed the convictions in 1668. See Taswell-Langmead, *supra*, at 378, note 55.

[11] See Holdsworth, *supra*, at 503–511.

tion, then, we look particularly to the prophylactic purposes of the clause.[12]

The Government argues that the clause was meant to prevent only prosecutions based upon the "content" of speech, such as libel actions, but not those founded on "the antecedent unlawful conduct of accepting or agreeing to accept a bribe." Brief of the United States, at 11. Although historically seditious libel was the most frequent instrument of intimidating legislators, this has never been the sole form of legal proceedings so employed,[13] and the language of the Constitution is framed

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[12] Compare *Thornhill* v. *Alabama*, 310 U. S. 88, and *New York Times Co.* v. *Sullivan*, 376 U. S. 254, for expressions of the central importance to our political system of uninhibited political expression as guaranteed to the general populace by the First and Fourteenth Amendments.

[13] See, *e. g.*, *Strode's Case*, one of the earliest and most important English cases dealing with the privilege. In 1512, Richard Strode, a member of Commons from Devonshire, introduced a bill regulating tin miners which appears to have been motivated by a personal interest. He was prosecuted in a local Stannary Court, a court of special jurisdiction to deal with tin miners, for violating a local law making it an offense to obstruct tin mining. He was sentenced and imprisoned. Parliament released him in a special bill, declaring "That suits, accusements, condemnations, executions, fines, amerciaments, punishments, corrections, grievances, charges, and impositions, put or had, or hereafter to be put or had, unto or upon the said *Richard*, and to every other of the person or persons afore specified that now be of this present Parliament, or that of any Parliament hereafter shall be, for any bill, speaking, reasoning, or declaring of any matter or matters concerning the Parliament to be communed and treated of, be utterly void and of none effect." 4 Hen. 8, c. 8, as reproduced in Tanner, Tudor Constitutional Documents, 558 (2d ed. 1930); see Taswell-Langmead, *supra*, at 248–249. During the prosecution of Sir John Eliot in 1629 it was argued that Strode's Act applied to all legislators, but the court held that it was a private act. 3 Howell St. Trials 294, 309. In 1667 both Houses of Parliament declared by formal resolutions that Strode's Act was a general law, "And that it extends to indemnify all and every the Members of both Houses of Parliament, in all Parliaments, for and touching all

in the broadest terms. The broader thrust of the privilege is indicated by a nineteenth century British case, *Ex parte Wason*, 4 Q. B. 573 (1869), which dealt specifically with an alleged criminal conspiracy. There a private citizen moved that a magistrate be required to prosecute several members of the House of Lords for conspiring wrongfully to prevent his petition from being heard on the floor. The court denied the motion, stating that statements made in the House "could not be made the foundation of civil or criminal proceedings . . . . And a conspiracy to make such statements would not make the person guilty of it amenable to the criminal law." 4 Q. B., at 576. (Cockburn, C. J.) Mr. Justice Lush added, "I am clearly of opinion that we ought not to allow it to be doubted for a moment that the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House."

In the same vein the Government contends that the Speech or Debate Clause was not violated because the gravamen of the count was the alleged conspiracy, not the speech, and because the defendant, not the prosecution, introduced the speech itself.[14] Whatever room the

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Bills, speaking, reasoning, or declaring of any Matter or Matters in and concerning the Parliament, to be communed and treated of, and is only a declaratory law of the antient and necessary Rights and Privileges of Parliament." 1 Hatsell, Precedents of Proceedings in the House of Commons, 86–87 (1786); see Taswell-Langmead, *supra*, at 378, note 55. The central importance of Strode's case in English constitutional history is persuasive evidence that the parliamentary privilege meant more than merely preventing libel and treason prosecutions.

[14] The Government, however, did introduce a reprint of the speech in its case in chief, in order to show how the co-conspirators made use of it. Certain portions were shown to be outlined in red because, as the prosecution's witness testified, "these were the points most pertinent to what we were trying to put across and for ease

Constitution may allow for such factors in the context of a different kind of prosecution, we conclude that they cannot serve to save the Government's case under this conspiracy count. It was undisputed that Johnson delivered the speech; it was likewise undisputed that Johnson received the funds; controversy centered upon questions of who first decided that a speech was desirable, who prepared it, and what Johnson's motives were for making it. The indictment itself focused with particularity upon motives underlying the making of the speech and upon its contents:

> "(15) It was a part of said conspiracy that the said THOMAS F. JOHNSON should . . . render services, for compensation, . . . to wit, the making of a speech, defending the operations of Maryland's 'independent' savings and loan associations, the financial stability and solvency thereof, and the reliability and integrity of the 'commercial insurance' on investments made by said 'independent' savings and loan associations, on the floor of the House of Representatives." App. 5–6.

We hold that a prosecution under a general criminal statute dependent on such inquiries necessarily contravenes the Speech or Debate Clause. We emphasize that our holding is limited to prosecutions involving circumstances such as those presented in the case before us. Our decision does not touch a prosecution which, though as here founded on a criminal statute of general application, does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them. And, without intimating any view thereon, we expressly leave open for consideration when

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in the person's reading it." App. 259. The use of a copy of the speech in this context necessarily required the jury to read those portions and to reflect upon its substance.

the case arises a prosecution which, though possibly entailing inquiry into legislative acts or motivations, is founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members.[15]

The Court of Appeals' opinion can be read as dismissing the conspiracy count in its entirety. The making of the speech, however, was only a part of the conspiracy charge. With all references to this aspect of the conspiracy eliminated, we think the Government should not be precluded from a new trial on this count, thus wholly purged of elements offensive to the Speech or Debate Clause.

IV.

The Court of Appeals held that Johnson was entitled to a new trial on the conflict of interest counts because the admission of evidence concerning the speech aspect of the conspiracy count was prejudicial on these other counts as well. The Government reserved the right to contest the order of a new trial, but, except for a footnote in its reply brief, it did not so argue in this Court, but on the contrary stated in oral argument that it stood solely on its position with reference to the conspiracy count.[16] In these circumstances we find no occasion

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[15] Cf. Note, The Bribed Congressman's Immunity from Prosecution, 75 Yale L. J. 335, 347–348 (1965).

[16] In oral argument, government counsel stated as follows:

"And so the question that we brought to the Court, and the only question that we think is properly involved in this case now, revolves around the taking of money to give a speech on the floor of Congress."

Question from the Bench: "Well, was there [to be] a new trial on the other phase of it?"

Government Counsel: "It [the Court of Appeals] ordered a new trial on the other phase. And we have not brought that issue here. We reserved it in our petition but we did not argue it, I might say largely because it cannot be determined without reading

to review the Court of Appeals' assessment of the record in this respect.

For the foregoing reasons we affirm the judgment of the Court of Appeals and remand the case to the District Court for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE BLACK took no part in the decision of this case.

MR. JUSTICE WHITE took no part in the consideration or decision of this case.

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the whole record. The question in this case which we did bring here, and which we think is the question involved, is this: Article 1, Section 6 of the Constitution provides that for any speech or debate in either House, no member of Congress shall be questioned in any other place. And as we view it, the question is does that Speech or Debate Clause mean that Congress is without power under the Constitution to make it a crime triable in court for a Congressman to take money to make a speech?"

SUPREME COURT OF THE UNITED STATES

No. 25.—October Term, 1965.

United States, Petitioner, *v.* Thomas F. Johnson.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[February 24, 1966.]

Mr. Chief Justice Warren, with whom Mr. Justice Douglas and Mr. Justice Brennan join, concurring in part and dissenting in part.

I concur in the limited holding of the Court that the use of the Congressman's speech during this particular trial—with an examination into its authorship, motivation and content—was violative of the Speech and Debate Clause. I also join the Court in its remand of the conspiracy count for a new trial, this time purged of offensive matter. The Court's refusal to decide the validity of the conviction under the seven substantive counts, however, prompts me to dissent. In my view, the conflict of interest counts are properly before us, raise important questions and should be resolved now since the respondent will probably raise these issues on his forthcoming reprosecution.

I.

The Court explains its refusal to reach the substantive counts by referring to a single statement made by the Government's counsel at the outset of oral argument, pp. 16–17, n. 16, *ante*. In the same colloquy, the Government remarked that it did not consider the issues raised by the substantive counts to be of general importance, and felt that the question of the effect of the tainted evidence on these counts would unavoidably require an examination of the entire 1,300-page record.

Prior to oral argument, the Government had argued these issues exhaustively in the Court of Appeals, and had mentioned them in its petition for certiorari in compliance with Supreme Court Rule 40 (1)(d)(1) and (2), and in its reply brief on the merits. Both in its reply brief and later in oral argument, in answer to inquiries from the bench, it contended that the evidence, arguments and instructions on the conspiracy count were distinct from the substantive counts. At best, then, the Government's position is ambiguous, if not puzzling.[1] Beyond that, the respondent himself specifically urged this Court to consider the issues in his brief on the merits, pp. 100–101 and n. 86, devoted 33 pages of argument to this phase of the case and addressed himself to the questions on oral argument. Under these unique circumstances, I think it is our duty carefully to scrutinize all the facts and issues involved in the prosecution.

II.

After reading the record, it is my conclusion that the Court of Appeals erred in determining that the evidence

[1] I confess to some surprise that the Government almost abandoned these issues when in this Court, even though the major question in the case is the application of the Speech and Debate Clause. In the first place, this Court has not had occasion to deal with the conflict of interest statutes as applied to a Member of Congress since 1906, *Burton* v. *United States*, 202 U. S. 344, and they remain viable although lately revised, see Manning, Federal Conflict of Interest Law 14–73 (1964). Moreover, the Government itself has argued strenuously and successfully in many cases that an erroneous conviction on one count does not vitiate a conviction on other counts, especially where concurrent sentences are involved, see, *e. g.*, *United States* v. *Romano*, 382 U. S. 132; *United States* v. *Gainey*, 380 U. S. 63, 65; *Sinclair* v. *United States*, 279 U. S. 263, 299; *Barnard* v. *United States*, 342 F. 2d 309 (C. A. 9th Cir.), certiorari denied, 382 U. S. 948. There are, in addition, numerous cases in which the issue was raised in this Court and the petitioner-defendant was denied certiorari.

concerning the speech infected the jury's judgment on the substantive counts. The evidence amply supports the prosecution's theory and the jury's verdict on these counts—that the respondent received over $20,000 for attempting to have the Justice Department dismiss an indictment against his co-conspirators, without disclosing his role in the enterprise. This is the classic example of a violation of § 281 by a member of the Congress.[2] See *May* v. *United States*, 175 F. 2d 994, 1006 (C. A. D. C. Cir.); *United States* v. *Booth*, 148 Fed. 112, 117 (D. C. D. Ore.). The arguments of government counsel and the court's instructions separating the conspiracy from the substantive counts seem unimpeachable. The speech was a minor part of the prosecution. There was nothing in it to inflame the jury and the respondent pointed with pride to it as evidence of his vigilance in protecting the financial institutions of his State. The record further reveals that the trial participants were well aware that a finding of criminality on one count did not authorize similar conclusions as to other counts, and I believe that this salutary principle was conscientiously followed. Therefore, I would affirm the convictions on the substantive counts.

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[2] The sentence given was lenient—six months on each count, but all to run concurrently. The conspiracy statute, 18 U. S. C. § 371, authorizes a five-year prison term and a $10,000 fine, and the conflict of interest statute in effect at the trial permitted a two-year sentence and a $10,000 fine for each violation, 18 U. S. C. § 281.